

**立法會**  
*Legislative Council*

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**Paper for the House Committee Meeting  
on 20 May 2011**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 13 May 2011**

**Date of tabling in LegCo : 18 May 2011**

**Amendment to be made by : 15 June 2011 (or 6 July 2011 if extended by resolution)**

**PART I AVOIDANCE OF DOUBLE TAXATION**

**Inland Revenue Ordinance (Cap. 112)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Japan) Order (L.N. 64)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (French Republic) Order (L.N. 65)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Principality of Liechtenstein) Order (L.N. 66)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) Order (L.N. 67)**

**Specification of Arrangements (Government of the Grand Duchy of Luxembourg) (Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) (Amendment) Order 2011 (L.N. 68)**

L.N. 64 to L.N. 67

L.N. 64 to L.N. 67 are made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (the Ordinance) to give effect to the following comprehensive agreements for avoidance of double taxation (CDTAs) respectively:

- (a) the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSARG) and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income together with a protocol to the Agreement signed on 9 November 2010 (the Japanese Agreement);
- (b) the Agreement between HKSARG and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion together with a protocol to the Agreement signed on 21 October 2010 (the French Agreement);
- (c) the Agreement between HKSARG and the Government of the Principality of Liechtenstein for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital together with a protocol to the Agreement signed on 12 August 2010 (the Liechtenstein Agreement); and
- (d) the Agreement between HKSARG and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income together with a protocol to the Agreement signed on 1 December 2010 (the New Zealand Agreement).

2. Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory.

3. According to the LegCo Briefs issued by the Financial Services and the Treasury Bureau on 11 May 2011 on L.N. 64 to L.N. 67, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own residents' income

derived from Hong Kong. Despite that many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, the existence of a CDTA will provide enhanced certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

4. L.N. 64 to L.N. 67 declare respectively that for the purposes of section 49(1A) of the Ordinance, the following arrangements have been made as double taxation relief arrangements and it is expedient that those arrangements should have effect -

- (a) the arrangements specified in Articles 1 to 30 of the Japanese Agreement and Paragraphs 1 to 8 of the protocol to the Agreement;
- (b) the arrangements specified in Articles 1 to 29 of the French Agreement and Paragraphs 1 to 13 of the protocol to the Agreement;
- (c) the arrangements specified in Articles 1 to 29 of the Liechtenstein Agreement and Paragraphs 1 and 2 of the protocol to the Agreement; and
- (d) the arrangements specified in Articles 1 to 27 of the New Zealand Agreement and Paragraphs 1 to 4 of the protocol to the Agreement.

5. The provisions in the Japanese Agreement, the French Agreement, the Liechtenstein Agreement and the New Zealand Agreement set out the allocation of taxing rights between HKSARG and the respective jurisdictions and the relief on tax rates on different types of income. Each of the above Agreements contains an article on exchange of information which is based on the Organisation for Economic Cooperation and Development (OECD) 2004 version of the Exchange of Information (EoI) Article. During the scrutiny of the Inland Revenue (Amendment) (No. 3) Bill 2009, the Administration presented a sample EoI Article to the Bills Committee vide LC Paper No. CB(1)106/09-10(02). According to the LegCo Briefs for L.N. 64 to L.N. 67 (File Ref: TsyB R 183/800-1-1/23/1 (C), TsyB R 183/800-1-1/21/1 (C), TsyB R 183/800-1-1/48/1 (C) and TsyB R 183/800-1-1/18/1 (C)), the Japanese Agreement, the French Agreement, the Liechtenstein Agreement and the New Zealand Agreement have adopted all the safeguards in the sample EoI Article.

6. In the New Zealand Agreement, paragraph 2 of Article 24 stipulates that any information received under paragraph 1 by a Contracting Party shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. This is the same as the relevant provision in Hong Kong's sample EoI Article. However, in Paragraph 4(b) of the Protocol to the Agreement, it is provided that the New Zealand competent authority may disclose information to the Office of the Ombudsmen in the investigation of complaints against the administrative actions of the New Zealand Inland Revenue Department. In reply to the enquiries of the Legal Service Division, the Administration explained that it had sought the agreement of the New Zealand side during the negotiations that the information exchanged would only be disclosed to the tax authorities and would not be released to their oversight body. In accepting the Administration's proposal, the New Zealand delegates explained that the Office of the Ombudsmen would need to examine the tax information relating to the relevant taxpayer in the course of their investigation on any complaint against the New Zealand Inland Revenue Department. The Administration considered this a justifiable request and therefore accepted the New Zealand's proposal.

7. It is observed that the Japanese Agreement and the Liechtenstein Agreement both provide in paragraph 5 of Article 24 that if the competent authorities of the Contracting Parties are unable to reach an agreement, any unresolved issues shall be submitted to arbitration if the person who has presented the case so requests. However, the French Agreement and the New Zealand Agreement do not provide for the resolution of such disputes by arbitration.

8. The effects of the declaration made under section 49(1A) in respect of the arrangements set out in paragraph 4 above are -

- (a) that the arrangements have effect in relation to tax under the Ordinance despite anything in any enactment; and
- (b) that the arrangements shall, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the jurisdictions, have effect in relation to any tax of the jurisdictions that is the subject of that provision.

L.N. 68

9. Under the Specification of Arrangements (Government of the Grand Duchy of Luxembourg) (Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) Order (Cap. 112 sub. leg. BA) (the principal order), the arrangements in Articles 1 to 29 of the Agreement between HKSARG and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (the Luxembourg Agreement) dated 2 November 2007 are declared to be double taxation relief arrangements under section 49 of the Ordinance.

10. The Government of Hong Kong and the Government of the Grand Duchy of Luxembourg entered into a protocol (the Luxembourg Protocol) to amend the Luxembourg Agreement on 11 November 2010. To give effect to the amendments effected by the Luxembourg Protocol, L.N. 68 amends the principal order by adding new provisions that declare the arrangements in Articles 1 to 5 of the Luxembourg Protocol to be additional double taxation relief arrangements. Article 2 of the Luxembourg Protocol, which adds a paragraph 5 to Article 24 of the Luxembourg Agreement, provides that unresolved issues between the competent authorities of the Contracting Parties shall be submitted to arbitration if the person so requests. The EoI Article in Article 25 of the Luxembourg Agreement is also replaced by an updated one in Article 3 of the Luxembourg Protocol.

11. The effect of the new provisions added to the principal order are -

- (a) that the arrangements in Articles 1 to 5 of the Luxembourg Protocol have effect in relation to tax under the Ordinance despite anything in any enactment; and
- (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the Grand Duchy of Luxembourg, have effect in relation to any tax of the Grand Duchy of Luxembourg that is the subject of that provision.

12. L.N. 68 also makes consequential amendments to the principal order.

13. According to paragraphs 5 and 6 of the LegCo Brief (File Ref: TsyB R 183/800-1-1/25/1 (C)) issued by the Financial Services and the Treasury Bureau on 11 May 2011, the Luxembourg Protocol has adopted all the safeguards in the sample EoI Article.

14. L.N. 64 to L.N. 68 will come into operation on 7 July 2011.

15. The Panel on Financial Affairs has not been consulted on L.N. 64 to L.N. 68.

16. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 64 to L.N. 68. A further report will be provided if necessary.

## **PART II ELECTORAL MATTERS**

### **Electoral Affairs Commission Ordinance (Cap. 541)**

**Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2011 (L.N. 71)**

**Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) (Amendment) Regulation 2011 (L.N. 72)**

**Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2011 (L.N. 73)**

**Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2011 (L.N. 74)**

**Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2011 (L.N. 75)**

**Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2011 (L.N. 76)**

**Electoral Procedure (Village Representative Election) (Amendment) Regulation 2011 (L.N. 77)**

**Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) (Amendment) Regulation 2011 (L.N. 78)**

**Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) (Amendment) Regulation 2011 (L.N. 79)**

**Background**

17. The above nine items of subsidiary legislation are made by the Electoral Affairs Commission (EAC).

18. According to the LegCo Brief, the Registration and Electoral Office (REO) has reviewed the relevant subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) (EACO) to prepare for the coming District Council (DC), Election Committee subsector (ECSS), Chief Executive (CE) and Legislative Council (LegCo) elections to be held in 2011 and 2012. The review has identified areas where amendments should be made.

19. The scope of the subsidiary legislation relates to four areas –

- (a) aligning or improving electoral procedures;
- (b) refining the voting arrangements for electors in custody;
- (c) making amendments consequential to the CE Election (Amendment) Ordinance (Ordinance 1 of 2011); and
- (d) making amendments consequential to the LegCo (Amendment) Ordinance (Ordinance 2 of 2011).

**Aligning or improving electoral procedures**

20. The main amendments in this area, which are effected by four of the items (L.N. 73 to L.N. 76), are to –

- (a) achieve consistency in the relevant provisions for the service by a candidate of an election to the Returning Officer (RO) of a copy of authorization of an election expense agent or a notice revoking such authorization;
- (b) align the provisions for ECSS election with those of DC, CE and LegCo elections by allowing the RO in ECSS elections to display a revised notice of the no canvassing zone and/or no staying zone at or near the polling station if the zone has been varied;

- (c) align the provisions for DC, ECSS and CE elections with those of the LegCo election to empower EAC to specify the form for a candidate of an election to lodge the election expense return;
- (d) make provisions for candidates in DC, ECSS, CE and LegCo elections to use electronic election advertisements; and
- (e) empower a Presiding Officer (PRO) of a polling station to adjourn counting of votes if it appears to the PRO that the counting is likely to be obstructed, disrupted, undermined or seriously affected by certain specified occurrence<sup>1</sup>.

### **Refining the voting arrangements for electors in custody**

21. The main amendments in this area, which are effected by five of the items (L.N. 73 to L.N. 77), are to –

- (a) empower the Chief Electoral Office (CEO) or the Director of Home Affairs (for village representatives elections) to obtain the prisoner registration number allocated by the Commissioner of Correctional Services to a voter in the custody of the Correctional Services Department (CSD) to facilitate the making of voting arrangements for DC, LegCo, ECSS, CE and village representatives elections;
- (b) empower an officer of CSD to use a sound amplifying system or device for the performance of his or her duty in the no canvassing zone of a dedicated polling station (DPS)<sup>2</sup> situated in a prison;
- (c) make provisions for the display of a declaration by RO as to the death or disqualification of a candidate inside a DPS; and

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<sup>1</sup> Specified occurrences include the occurrence of a typhoon or other climatic condition of a serious nature; riot, open violence or other occurrence of public danger; or an occurrence which appears to the PRO to be a material irregularity relating to the election, the poll or count.

<sup>2</sup> "Dedicated polling station" refers to places where electors in custody are allocated to vote. See, for example, section 28(1BA) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D).



- (d) enable an election candidate to revoke the appointment of a person who has been appointed as a polling agent at a DPS situated in a prison by serving the notice of revocation to RO, instead of the PRO of the DPS.

### **Amendments consequential to the CE Election (Amendment) Ordinance (Ordinance 1 of 2011)**

22. The Chief Executive Election Ordinance (Cap. 569) (CEEEO) has been amended by the CE Election (Amendment) Ordinance (Ordinance 1 of 2011). One of the amendments is the creation of 10 special memberships in the Election Committee which are temporary in nature and will expire when the total number of LegCo seats increases from 60 to 70. As a result, amendments to the relevant subsidiary legislation by L.N. 71 have been made to provide for the recording of the particulars of these special members and their removal at the expiry of their membership, and to provide for a new notice of results of ECSS election.

23. The CE Election (Amendment) Ordinance has also amended section 14 to the Schedule to CEEEO, which empowers the Electoral Registration Officer to amend the final registers of ECSS voters and to arrange for the automatic registration of the newly elected DC members. Amendments to the relevant subsidiary legislation by L.N. 71 to enable the compilation and publication of the amended ECSS final registers have therefore been made.

24. Amendments by L.N. 76 to reflect changes in the voting arrangements for CE Election have also been made.

### **Amendments consequential to the LegCo (Amendment) Ordinance (Ordinance 2 of 2011)**

25. The Legislative Council Ordinance (Cap. 542) has been amended by the LegCo (Amendment) Ordinance (Ordinance 2 of 2011). One of the amendments is the establishment of the District Council (second) functional constituency (DC (second) FC) under which 5 seats will be returned from the whole of Hong Kong as a single constituency in accordance with the proportional representation list system. As the proportional representation list system under the current legislative framework only applies to geographical constituency, amendments to the relevant subsidiary legislation by L.N. 72 to L.N. 73 and L.N. 78 to L.N. 79 have been made.

26. Amendments by L.N. 71 to provide for the registration of voters in relation to the DC (second) FC and the District Council (first) functional constituency have been made.

27. Amendments by L.N. 72 to the definition of "candidate" to reflect the creation of DC (second) FC in relation to the functions of the Nomination Advisory Committee for LegCo elections have been made.

28. In relation to the procedures for financial assistance for LegCo elections and DC elections, amendments by L.N. 79 to the definition of candidates of LegCo elections to reflect the creation of the new DC (second) FC have also been made.

### **Consultation with LegCo Panel**

29. On 18 March 2011, the Administration briefed the Panel on Constitutional Affairs on the scope of the proposed amendments to be made by the EAC to the subsidiary legislation under EACO on electoral procedures, voter registration and other practical arrangements to cater for the coming DC, ECSS, CE and LegCo elections to be held in 2011 and 2012. Members in general were supportive of the proposed amendments. They stressed the need to expedite the voting counting process, and to facilitate the return of election advertisements and the lodging of election returns etc.

30. L.N. 71 to L.N. 79 will come into operation on 8 July 2011.

31. Members may refer to the LegCo Brief (File Ref.: REO ES/23/52) issued by the REO in May 2011 for further information.

32. The scrutiny of the above nine items of subsidiary legislation is continuing.

### **PART III MISCELLANEOUS MATTERS**

#### **Road Traffic Ordinance (Cap. 374)**

#### **Road Traffic (Public Service Vehicles) (Amendment) Regulation 2011 (L.N. 69)**

33. This Amendment Regulation is made by the Chief Executive in Council under section 7(1C) of the Road Traffic Ordinance (Cap. 374). It

amends the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) (the Regulations) to adjust fares specified in Schedule 5 of the Regulations for taxis licensed to operate in the urban area (Hong Kong and Kowloon), New Territories (NT) and Lantau as follows-

(a) for taxis licensed to operate within Hong Kong & Kowloon-

	Existing Fare	New Fare
the fare for the first 2 kilometres or any part of those 2 kilometres	\$18.00	\$20.00
the prescribed ceiling regarding the chargeable amount at which the fare for every further 200 meters or any part of those 200 meters <sup>3</sup> prescribed under the scale of fares reaches	\$70.50	\$72.50
the prescribed ceiling regarding the chargeable amount at which the fare for waiting time (the time during which the taxi is hired but not in motion) for every 1 minute or any part of that period <sup>4</sup> prescribed under the scale of fares reaches	\$70.50	\$72.50

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<sup>3</sup> The prescribed scale of fares for every further 200 meters or any part of those 200 meters for Hong Kong & Kowloon taxis), Lantau Taxis and NT taxis are respectively stated to be \$1.50 and \$1.00 (Hong Kong & Kowloon Taxis); \$1.30 and \$1.20 (for Lantau Taxis) and \$1.30 and \$1.00 under Schedule 5 of the Regulations.

<sup>4</sup> The prescribed scale of fares for every 1 minute or any part of that period for Hong Kong & Kowloon taxis, Lantau Taxis and NT taxis are respectively stated to be \$1.50 and \$1.00 (Hong Kong & Kowloon Taxis); \$1.30 and \$1.20 (for Lantau Taxis) and \$1.30 and \$1.00 under Schedule 5 of the Regulations.

(b) for taxis licensed to operate within Lantau-

	Existing Fare	New Fare
the fare for the first 2 kilometres or any part of those 2 kilometres	\$13.00	\$15.00
the prescribed ceiling regarding the chargeable amount at which the fare for every further 200 meters or any part of those 200 meters prescribed under the scale of fares reaches	\$130.00	\$132.00
the prescribed ceiling regarding the chargeable amount at which the fare for waiting time (the time during which the taxi is hired but not in motion) for every 1 minute or any part of that period prescribed under the scale of fares reaches	\$130.00	\$132.00

(c) for taxis licensed to operate within New Territories-

	Existing Fare	New Fare
the fare for the first 2 kilometres or any part of those 2 kilometres	\$14.50	\$16.50
the prescribed ceiling regarding the chargeable amount at which the fare for every further 200 meters or any part of those 200 meters prescribed under the scale of fares reaches	\$53.50	\$55.50
the prescribed ceiling regarding the chargeable amount at which the fare for waiting time (the time during which the taxi is hired but not in motion) for every 1 minute or any part of that period prescribed under the scale of fares reaches	\$53.50	\$55.50

34. The Amendment Regulation will come into operation on 10 July 2011.

35. The fare adjustment applications made by the urban, NT and Lantau taxi associations to the Transport Department were for an increase of the respective flagfall charges by \$2. The fare increase effected by the Amendment Regulation in relation to the urban, NT and Lantau taxis is at the average rate of 5.15%, 8.05% and 4.11% respectively. Members may wish to refer to LegCo Brief (File Ref: THB(T)L 3/3/5) issued by the Transport and Housing Bureau in May 2011 for background and further information.

36. The fare adjustment applications have been considered and approved by the Transport Advisory Committee. The Panel on Transport was consulted on the taxi fare increase applications at its meeting on 17 December 2010. Some Panel members agreed that the proposed taxi fare increase might be necessary to cope with the large increase in the operating costs borne by taxi drivers arising from escalating insurance premium and fuel costs. Some Panel members were, however, concerned about the average rates of the proposed fare increase ranging between 4.11% to 8.05% and their impact on the public. Some Panel members further suggested that the Administration should consider introducing a fuel surcharge to mitigate increases in fuel costs.

### **Professional Accountants Ordinance (Cap. 50)**

#### **Professional Accountants (Amendment) Bylaw 2011 (L.N. 70)**

37. The Amendment Bylaw is made by the Hong Kong Institute of Certified Public Accountants (the Institute) under section 8 of the Professional Accountants Ordinance (Cap. 50) (the Ordinance) with the approval of the Chief Executive in Council. It adds 2 new paragraphs to bylaw 8 (bylaw 8(4) and 8(5)) of the Professional Accountants By-laws (Cap. 50 sub. leg. A). Bylaw 8 provides for the voting rights and means, as well as means of participation for a member of the Council of the Institute (the Council) to vote in a Council meeting. The newly added bylaw 8(4) provides that voting on any question is by a show of hands, unless a ballot is demanded by a majority vote of the members present and voting. Bylaw 8(5) provides that, for the purpose of bylaw 8(4), the reference to a show of hands in relation to a member of the Council who is regarded as being present at a meeting of the Council under bylaw 8(3) (which allows members to participate in a Council meeting by electronic means), means casting a vote orally.

38. The additions made by the Amendment Bylaw is to enable the members of the Council of the Institute that participate in a meeting, including those who participate by telephone, video conferencing or other electronic means, to vote by ballot at a meeting of Council if the majority vote of members present and voting so demand.

39. The Amendment Bylaw will come into operation on 1 August 2011.

40. According to the LegCo Brief issued by the Financial Services and the Treasury Bureau and dated 11 May 2011 (File Ref: FSB C/2/2/44C), members of the Institute approved the proposed amendments unanimously on 17 December 2010 and the President of the Institute has duly certified the Amendment Bylaw in accordance with section 8(2) of the Ordinance. Further, the Administration opined that the general public is unlikely to be affected by or interested in the amendment. Members may refer to the LegCo Brief for further information.

41. It is observed in subsection 3(4) of the Amendment Bylaw that the English text reads: "Voting is by a show of hands..." but it is rendered in Chinese as "就任何問題進行的表決，均須以舉手方式作出..." A letter has been issued to the Administration with a view to seeking clarification of the apparent discrepancy between the Chinese and English text of the subsection. The Legal Service Division is considering the reply by the Administration.

42. The Panel on Financial Affairs has not been consulted on the Amendment Bylaw.

**Pension Benefits Ordinance (Cap. 99)**  
**Pension Benefits Ordinance (Established Offices) (Amendment) Order 2011**  
**(L.N. 80)**

43. This Amendment Order is made by the Chief Executive under section 2(1) of the Pension Benefits Ordinance (Cap. 99) (the Ordinance) after consultation with the Executive Council.

44. This Amendment Order amends and updates Schedule 1 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99 sub. leg. J) (the Order) by adding 7 new ranks (Assistant Principal Government Counsel, Principal Family Court Judge, Chief Landscape Architect, Senior Primary School Master or Mistress, Head of Create Hong Kong, Head of Greening, Landscape and Tree Management Section and Head of Tree Management Office) to and by deleting 1 rank (Rating Adviser, owing to its being obsolete)

from Schedule 1 and adding 2 new shadow ranks (Associate Medical Technologist (HA) and Medical Technologist (Hospital Services)(HA)) to Schedule 2 to the Order.

45. The pensions legislation provides that the pension factor used in computing the pension benefits of an office conferred to an established office is higher than that of a non-established office, an officer on an established office will enjoy a larger sum of pension benefits.

46. The creation of the above 7 new ranks has already been approved by the Finance Committee (FC) of LegCo and the 2 shadow ranks has also been approved by the Director of Health under the authority delegated by the FC. According to the LegCo Brief (File Ref: CSBCR/AP/4-075-004/3 Pt.9) issued by the Civil Service Bureau and dated 11 May 2011, this Amendment Order is an updating exercise to reflect the above approved changes and the Administration did not consider it necessary to consult the public. The Panel on Public Services has not been consulted on the Amendment Order.

#### **Coroners Ordinance (Cap. 504)**

#### **Places for Autopsies (Amendment) Order 2011 (L.N. 81)**

47. The Amendment Order is made by the Secretary for Food and Health under section 5(1)(a) of the Coroners Ordinance (Cap. 504) to add Pok Oi Hospital Mortuary to the list of mortuaries for the reception of dead bodies for autopsies prescribed in the Schedule to the Places for Autopsies Order (Cap. 504 sub. leg. A) and to remove Castle Peak Hospital Mortuary, Kwai Chung Hospital Mortuary and Kowloon Hospital Mortuary from the list.

48. The Amendment Order will come into operation on 8 July 2011.

49. According to the LegCo Brief (with no file reference number) issued by Food and Health Bureau in May 2011, Pok Oi Hospital Mortuary is added with a view that it and the Tuen Mun Hospital Mortuary could back up each other in the same cluster. Further, the proposed removal of the above named 3 hospitals from the list is occasioned by the closing down of Castle Peak Hospital Mortuary and Kwai Chung Hospital Mortuary in 2005 and 2004 respectively and there have been no autopsy facilities in Kowloon Hospital since 2003. No public consultations on the above proposed changes have been conducted as there are no particular implications on general medical services to the public and will not give rise to major public concerns. The Administration has also not consulted the Panel on Health Services on the proposed Amendment Order.

**Buildings Energy Efficiency Ordinance (Cap. 610)**  
**Buildings Energy Efficiency Ordinance (Commencement) Notice 2011**  
**(L.N. 82)**

50. By the Notice made under section 1(2) of the Building Energy Efficiency Ordinance (Cap. 610) (the Ordinance), the Secretary for the Environment appoints 21 September 2012 as the day on which Parts 2, 3, 4, 5 and 6 of the Ordinance are to come into operation.

51. The Ordinance is enacted to require compliance with codes of practice promulgated by Electrical and Mechanical Services Department (EMSD) concerning the energy efficiency of air-conditioning installations, electrical installations, lift and escalator installations and lighting installations and energy audits in respect of certain types of buildings. The main contents of Parts 2 to 6 of the Ordinance are as follows-

- (a) **Part 2** stipulates the compliance procedures for a prescribed building in respect of which a consent to the commencement of building works for superstructure construction is given after the commencement of this part;
- (b) **Part 3** stipulates the compliance procedures for major retrofitting works in a prescribed building;
- (c) **Part 4** stipulates the application, compliance procedures and other details of the requirements to conduct energy audits in a building specified in Schedule 4 (a commercial building or a portion of a composite building that is for commercial use) to the Ordinance, but does not apply to a building if the Director of Electrical and Mechanical Services (DEMS) is satisfied on a declaration by the owner of the building that the building will cease to fall within Schedule 4 within 12 months after the date of the declaration;
- (d) **Part 5** empowers DEMS to serve an improvement notice to direct the responsible party to take remedial action where there is a contravention of a requirement under the Ordinance; and
- (e) **Part 6** empowers DEMS to be the enforcement authority under the Ordinance. It provides for DEMS to authorize public officers to exercise any power and perform any duties conferred or imposed on him for the purposes of the Ordinance, including entering a building or an unit for inspection.



52. According to the Administration, after the 2 subsidiary legislation (Buildings Energy Efficiency (Fees) Regulation (Cap. 610 sub. leg. A) (the Fees Regulation) and Building Energy Efficiency (Registered Energy Assessors) Regulation (Cap. 610 sub. leg. B) (the Assessors Regulation)) came into effect, an 18-month period would be allowed for registration by Registered Energy Assessors (who are qualified persons that fulfill the requirements provided under the Assessors Regulation) before other requirements under the Ordinance come into effect. Both Regulations came into operation on 21 March 2011. The Secretary for the Environment appoints 21 September 2012 to be the date on which the other parts of the Ordinance come into operation.

53. The Panel on Environmental Affairs has not been consulted on the Notice.

**Legal Aid Ordinance (Cap. 91)**

**Legal Aid Ordinance – Resolution of the Legislative Council  
(Commencement) Notice (L.N. 83)**

54. By this Notice made pursuant to paragraph (b) of the resolution made and passed by the LegCo under section 7(a) of the Legal Aid Ordinance (Cap. 91) (the Ordinance) on 30 March 2011 and published in the Gazette as L.N. 51 of 2011, the Secretary of Home Affairs has appointed 18 May 2011 as the day on which the above resolution comes into operation.

55. The above resolution was passed to adjust upwards: (a) the limit of financial resources of a person who is eligible to receive legal aid under section 5 of the Ordinance (Ordinary Legal Aid Scheme) from \$175,800 to \$260,000 and (b) the limit under section 5A(b) of the Ordinance (the Supplementary Legal Aid Scheme) from \$488,400 to \$1,300,000.

56. The Administration of Justice and Legal Services (AJLS) Panel has not discussed the Notice.

**Legal Aid (Assessment of Resources and Contributions) (Amendment)  
Regulation 2011 (L.N. 35 of 2011)**

**Legal Aid (Assessment of Resources and Contributions) (Amendment)  
Regulation 2011 (Commencement) Notice (L.N. 84)**

57. By this Notice made under section 1 of the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2011 (L.N. 35 of

2011) (the Amendment Regulation), the Secretary for Home Affairs has appointed 18 May 2011 as the day on which the Amendment Regulation comes into operation.

58. Two main amendments are made under the Amendment Regulation. First, the amount of allowable deduction under rule 8 and rule 9 of Schedule 1 of the Legal Aid (Assessment of Resources and Contribution) Regulations (Cap. 91 sub. leg. B) (the Regulations) is increased from the current 35 percentile to 50 percentile household expenditure. Household expenditure means the level of expenditure of households of a particular size, excluding expenditure of rent, as obtained in the 5-yearly Household Expenditure Survey conducted by the Census and Statistics Department. Secondly, a new rule 14 is added to Schedule 2 to the Regulations. Under the new rule 14, an amount equivalent to the limit of financial resources specified in section 5(1) of the Legal Aid Ordinance (Cap. 91) is to be disregarded in the computation of the disposable capital of a legal aid applicant who is of or over 60 years of age.

59. The AJLS Panel has not discussed the Notice.

### **Concluding Observation**

60. Save and except for L.N. 70 that are still being scrutinized by the Legal Service Division and issues above identified, no difficulties in the legal and drafting aspects have been identified in relation to this part.

Prepared by

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