# 立法會
# *Legislative Council*

LC Paper No. LS1/10-11

**Paper for the House Committee Meeting**
**on 15 October 2010**

**Legal Service Division Report on**
**Subsidiary Legislation Gazetted on 8 October 2010**

**Date of tabling in LegCo :** 13 October 2010

**Amendment to be made by :** 10 November 2010 (or 1 December 2010 if extended by resolution)

## PART I TRADE DESCRIPTIONS

**Trade Descriptions Ordinance (Cap. 362)**
**Trade Descriptions (Place of Origin) (Watches) (Amendment) Order 2010 (L.N. 112)**
**Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) (Amendment) Order 2010 (L.N. 113)**
**Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) (Amendment) Order 2010 (L.N. 114)**
**Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) (Repeal) Notice 2010 (L.N. 115)**
**Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) (Repeal) Notice 2010 (L.N. 116)**

Background

Under section 2(2)(a)(i) of the Trade Descriptions Ordinance (TDO) (Cap. 362), goods shall be deemed to have been manufactured in the place in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture. By virtue of section 7 of TDO, it is an offence for any person to apply a false trade description (which includes place of manufacture of goods as defined in section 2(1)) to any goods, or supplies or possesses for sale any goods to which a false description is applied.

2. Notwithstanding the general principle in determining the place of manufacture of goods as set out in section 2(2)(a)(i) of TDO, the Commissioner of Customs and Excise (the Commissioner) and The Director-General of Trade and Industry (DGTI) are empowered respectively by sections 2(2)(b)(i) and (ii) and 2(2A) of TDO to make orders and notices to cater for special needs for origin marking.

Under section 2(2)(b)(ii), the Commissioner may by order specify in relation to any description of goods different parts of which were manufactured or produced in different places, or of goods assembled in a place different from that in which their parts were manufactured or produced, in which of those places the goods are to be regarded for the purposes of TDO as having been manufactured and produced. Section 2(2)(b)(c) provides that section 2(2) of TDO does not apply to goods which are the subject of a notice published under section 2(2A). Under section 2(2A) of TDO, DGTI may by notice in the Gazette specify in relation to any description of goods (being goods that are subject to a scheme of import or export control specified in the notice) the place in which the goods are to be regarded for the purposes of TDO as having been manufactured or produced, and any such goods shall, for the purposes of this Ordinance, be deemed to have been manufactured or produced in such place.

L.N. 112

3. L.N. 112 is made by the Commissioner under section 2(2)(b)(ii) of TDO to amend the Trade Descriptions (Place of Origin) (Watches) Order (Cap. 362 sub. leg. D) for the purpose of allowing watches that have been exported, or are intended to be exported, from Hong Kong to New Zealand under the Hong Kong, China- New Zealand Closer Economic Partnership Agreement (CEP Agreement) signed by Hong Kong and New Zealand on 29 March 2010 and that are qualified for preferential tariff treatment under the Agreement to be marked as being of Hong Kong origin.

4. According to paragraph 4 of the LegCo Brief (File Ref. : CTIB FINT/109/4) issued by the Commerce and Economic Development Bureau, Trade and Industry Department and Customs and Excise Department in October 2010, under the CEP Agreement, for the purpose of tariff preference, certain origin rules were agreed with New Zealand in respect of watches assembled in Hong Kong from parts manufactured outside Hong Kong, certain piece-knitted garments with the assembling done in either Hong Kong or the Mainland China, and certain textile made-up articles with the cutting-to-shape of the fabric done in either Hong Kong or the Mainland. According to the Administration, these origin rules are different from the rules for determining the place of manufacture of those goods under TDO. To avoid any inadvertent misstatement of the place of manufacture under TDO and hence breach of the rules of TDO by exporters claiming preferential tariff treatment under the CEP Agreement, there is a need for the Commissioner to make amendment orders to align the origin marking requirements under TDO with the preferential origin rules as agreed under the CEP Agreement.

L.N. 113 and L.N. 114

5. L.N. 113 and L.N. 114, which are made under section 2(2)(b)(ii) of TDO, amend the Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Order (Cap. 362 sub. leg. H) (the Piece-Knitted Garments Order) and the Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Order (Cap. 362 sub. leg. I) (the Textile Made-up Articles Order) to provide an exception from the existing rules for determining the place of manufacture for piece-knitted garments and textile made-up articles for export under the CEP Agreement and the Mainland and

Hong Kong Closer Economic Partnership Arrangement (CEPA). The effect of L.N. 113 and L.N. 114 is that Hong Kong would be regarded as the place of manufacture of piece-knitted garments and textile made-up articles that are qualified for zero tariff treatment under CEPA or are qualified for preferential tariff treatment under the CEP Agreement.

L.N. 115 and L.N. 116

6. The Trade Descriptions (Place of Manufacture) (Piece-Knitted Garments) Notice (Cap. 362 sub. leg. G) (the Piece-Knitted Garments Notice) and the Trade Descriptions (Place of Manufacture) (Textile Made-up Articles) Notice (Cap. 362 sub. leg. J) (the Textile Made-up Articles Notice) specify respectively the place of manufacture of certain piece-knitted garments and textile made-up articles that are qualified for a zero tariff under the CEPA and are subject to a scheme of export control under the Import and Export Ordinance (Cap. 60).

7. L.N. 115 and L.N. 116 repeal the Piece-Knitted Garments Notice and the Textile Made-up Articles Notice in the light of the amendments to the Piece-Knitted Garments Order and the Textile Made-up Articles Order made in L.N. 113 and L.N. 114.

8. The Commerce and Industry Panel has not been consulted on the above items of subsidiary legislation.

9. L.N. 112 to L.N. 116 will come into operation on 1 January 2011. This, according to paragraph 13 of the LegCo Brief, will tie in with the date of implementation of the CEP Agreement.

## PART II COMMENCEMENT OF THE MINOR WORKS CONTROL SYSTEM UNDER THE BUILDINGS ORDINANCE (CAP. 123)

**Buildings Ordinance (Cap. 123)**
**Buildings (Amendment) Ordinance 2008 (20 of 2008)**
**Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2010 (L.N. 118)**
**Building (Minor Works) Regulation (L.N. 51 of 2009)**
**Building (Minor Works) Regulation (Commencement) Notice 2010 (L.N. 119)**
**Building (Administration) (Amendment) Regulation 2009 (L.N. 180 of 2009)**
**Building (Administration) (Amendment) Regulation 2009 (Commencement) Notice (L.N. 120)**

L.N. 118

10. By L.N. 118 made under section 2 of the Buildings (Amendment) Ordinance 2008 (20 of 2008) (the Amendment Ordinance), the Secretary for Development has appointed 31 December 2010 as the day on which the remaining

provisions of the Amendment Ordinance that have not come into operation will come into operation. Certain provisions of the Amendment Ordinance had already come into operation on 15 December 2008 and 30 December 2009 respectively through the Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2008 (L.N. 225 of 2008) gazetted on 13 October 2008 and the Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2009 (L.N. 247 of 2009) gazetted on 11 December 2009.

11. The Amendment Ordinance, which was enacted by LegCo in June 2008, amends the Buildings Ordinance (Cap. 123) (BO) to introduce a minor works control system to provide for a simplified control mechanism with associated penalties for offences relating to minor works, as well as a validation scheme for three specific types of unauthorized building works which had been completed before the commencement of the MWCS. Under the minor works control system, the requirement under the BO to seek the Building Authority's prior approval for building plans and consent to commence minor works would be dispensed with.

L.N. 119

12. By L.N. 119, the Secretary for Development has appointed 31 December 2010 as the day on which the remaining provisions of the Building (Minor Works) Regulation (L.N. 51 of 2009) (the Amendment Regulation) that have not come into operation will come into operation. The provisions relating to the establishment of Minor Works Contractors Registration Committee, operational procedures for registration as a registered minor works contractor, and the classification of minor works had already been brought into operation on 30 December 2009 by the Building (Minor Works) Regulation (Commencement) Notice 2009 (L.N. 248 of 2009) gazetted on 11 December 2009.

13. The principal object of the Amendment Regulation is to provide for various matters relating to the implementation of the minor works control system, including-

(a) classification of minor works and details of minor works items;

(b) simplified requirements for carrying out minor works;

(c) registration of "registered minor works contractors (RMWCs)";

(d) provisional registration of RMWCs;

(e) duties of building professionals and registered contractors in carrying out minor works;

(f) household minor works validation scheme; and

(g) designated exempted works.

L.N. 120

14. L.N. 120 appoints 31 December 2010 as the day on which the Building (Administration) (Amendment) Regulation 2009 (L.N. 180 of 2009) (the Administration Regulation) will come into operation.

15. The Administration Regulation, which is made by the Secretary for Development under section 38 of BO, amends the Building (Administration) Regulations (Cap. 123 sub. leg. A) to (a) reduce the period within which an authorized person, registered structural engineer, registered geotechnical engineer, registered general building contractor, registered specialist contractor or registered minor work contractor is required to notify the Building Authority of a change in the appointment of any technically competent person from 14 days to 7 days; and (b) require a registered minor works contractor to notify the Building Authority of a change of business address.

16. The Panel on Development has not been consulted on L.N. 118, L.N. 119 and L.N. 120.

## PART III COMMENCEMENT OF PROVISIONS RELATED TO PROPRIETARY CHINESE MEDICINES IN THE CHINESE MEDICINE ORDINANCE

**Chinese Medicine Ordinance (Cap. 549)**
**Chinese Medicine Ordinance (Commencement) Notice 2010 (L.N. 121)**
**Chinese Medicine (Fees) Regulation (Cap. 549 sub. leg. E)**
**Chinese Medicine (Fees) Regulation (Commencement) Notice 2010 (L.N. 122)**
**Chinese Medicines Regulation (Cap. 549 sub. leg. F)**
**Chinese Medicines Regulation (Commencement) Notice 2010 (L.N. 123)**

Background

17. The Chinese Medicine Ordinance (Cap. 549) (CMO) was enacted by LegCo in July 1999 to provide a statutory framework for the regulation of the practice, use, trading and manufacture of Chinese medicine in Hong Kong. The Chinese Medicines Regulation (Cap. 549 sub. leg. F) (the Regulation) provides for the licensing requirements for Chinese medicines traders and the registration system for proprietary Chinese medicines (pCm). Most of the provisions of CMO and the Regulation have been brought into operation. The provisions that are yet to come into operation mainly relate to control and regulation of pCm.

L.N. 121

18. By L.N. 121, the Secretary for Food and Health has appointed-

(a) 3 December 2010 as the day on which sections 119, 129, 150(1) (in so far as it relates to the contravention of section 119(1)), 155 (in so far as it relates to the contravention of section 119(1)), 156(2) and 158(5) of CMO come into operation; and

(b) 1 December 2011 as the day on which sections 143, 144, section 150(1) (in so far as it relates to the contravention of sections 143 and 144), and section 155 (in so far as it relates to the contravention of sections 143 and 144) of CMO come into operation.

The sections that will come into operation on 3 December 2010 relate to registration of pCm, clinical trials and medical tests of pCm and criminal liability for selling, importing or possessing any unregistered pCm. The sections that will come into operation on 1 December 2011 relate to the package inserts and labeling requirements applicable to pCm and criminal liability for non-compliance with these requirements.

L.N. 122

19. L.N. 122 appoints 3 December 2010 as the day on which items 14 (amount of fee for application for a certificate for clinical trial and medicinal test of pCm) and 15 (amount of fee for issue of a certificate for clinical trial and medicine test of pCm) of the Schedule to the Regulation will come into operation.

L.N. 123

20. L.N. 123 appoints-

(a) 3 December 2010 as the day on which section 37 (in so far it relates to section 119 of CMO) of the Regulation; and

(b) 1 December 2011 as the day on which sections 25, 26, 27, 28, 31 (in relation to the contravention of section 26(1) of the Regulation), 33, 34, 35, 36, 37 (in so far as it relates to section 144 of CMO) and Schedule 2 (in relation to the contravention of the section 26(1) of the Regulation) of the Regulation come into operation.

Members may refer to Annex B to the LegCo Brief (File Ref.: FH CR 1/3911/07) issued by the Food and Health Bureau and the Department of Health in October 2010 for details.

21. Upon the commencement of the provisions referred to in L.N. 121 and L.N. 123 respectively, any person who sells, imports or possesses any unregistered pCm in Hong Kong or fails to comply with the requirements of label and package inserts of any pCm commits an offence and shall be liable to a fine at level 6 (i.e. $100,000) and imprisonment for two years.

22. According to paragraph 13 of the LegCo Brief, the trade and stakeholders have been regularly reported of the progress of the processing of registration applications of pCm and they support the commencement of the relevant provisions on the mandatory registration of pCm and the requirements of label and package inserts.

23. The Administration consulted the Panel on Health Services on 12 July 2010 of its plan to commence from December 2010 the provisions in CMO and the Regulation related to the mandatory registration of pCm and the requirements of label and package inserts. Noting the concerns raised by some Chinese medicines traders about the relatively short consultation period on the commencement and the lack of sufficient time for them to comply with the new requirements, some members urged the Administration to extend the consultation period. Having regard to the views of the trade, the Administration extended the consultation to 6 July 2010. The Panel agreed to decide in this legislative session whether it was necessary to convene a special meeting to re-visit the matters and receive views from the trade.

24. It is noted that there are certain provisions of CMO that have not been brought into operation. The Legal Service Division is asking the Administration about the commencement date of these remaining provisions and will report further if necessary.

## PART IV MISCELLANEOUS

**Prevention and Control of Disease Ordinance (Cap. 599)**
**Prevention and Control of Disease Ordinance (Amendment of Schedules 1 and 2) Notice 2010 (L.N. 117)**

25. The Prevention and Control of Disease Ordinance (Cap. 599) (PCDO) and its subsidiary legislation provide a statutory framework for the control and prevention of disease that pose public health risks in Hong Kong. Under section 15 of PCDO, the Director of Health (DoH) may by notice published in the Gazette amend Schedule 1 (which specifies a list of infectious diseases known as "scheduled infectious diseases") and Schedule 2 (which specifies a list of infectious agents known as "scheduled infectious agents") to PCDO. At present, there are 47 scheduled infectious diseases and 31 scheduled infectious agents. These include "Swine Influenza" and "human swine influenza virus type A (subtype H1)" as specified in Schedule 1 and Schedule 2 to PCDO respectively.

26. L.N. 117 deletes (a) "Swine Influenza" from the list of scheduled infectious diseases specified in Schedule 1 to PCDO and (b) "human swine influenza virus type A (subtype H1)" from the list of scheduled infectious agents specified in Schedule 2 to PCDO. The effect of the Notice is that medical practitioners and the owner or person in charge of a laboratory are no longer required to notify DoH of cases of swine influenza and any leakage of the virus concerned in the laboratory.

27. According to paragraph 7 of the LegCo Brief (with no reference number provided) issued by the Department of Health of the Food and Health Bureau in October 2010, in view of the declining activity and unchanged clinical severity of human swine influenza (HSI), the improvement of scientific knowledge on HSI, the availability of effective vaccine, and the announcement of the World Health Organization that the world was no longer in phase 6 of influenza pandemic alert and that HSI is in the post-pandemic period, the Administration considers it no longer necessary to include swine influenza as one of the statutorily notifiable diseases, and its virus strain as one of the infectious agents subject to statutory reporting in case of leakage in the laboratories.

28. According to paragraph 14 of the LegCo Brief, the public and health professionals have been informed of the latest local and global situation of HSI through the media and various channels.

29. The Panel on Health Services has not been consulted on the Notice.

30. L.N. 117 has come into operation on the day it was published in the Gazette, i.e. 8 October 2010.

31. Save for the matter mentioned in paragraph 24, no difficulties in relation to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

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14 October 2010