

**立法會**  
**Legislative Council**

LC Paper No. LS48/11-12

**Paper for the House Committee Meeting  
on 23 March 2012**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 16 March 2012**

**Date of tabling in LegCo** : 21 March 2012

**Amendment to be made by** : 18 April 2012 (or 9 May 2012 if extended by resolution)

**PART I AMENDMENTS OF SCHEDULES TO SUBSIDIARY  
LEGISLATION**

**Prevention of Bribery Ordinance (Cap. 201)  
Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order  
2012 (L.N. 38)**

The Order is made by the Chief Executive in Council under section 35 of the Prevention of Bribery Ordinance (Cap. 201) (the Ordinance) to amend Schedules 1 and 2 to the Ordinance and to rectify a clerical error in Schedule 1.

2. Section 2 of the Ordinance defines public body to include any body specified in Schedule 1 to the Ordinance. The Order adds the four bodies below to Schedule 1, namely-

- (a) Hong Kong Internet Registration Corporation Limited (HKIRC);
- (b) Hong Kong Domain Name Registration Company Limited;
- (c) Hong Kong Applied Science and Technology Research Institute Company Limited; and
- (d) Hong Kong Cyberport Management Company Limited.

3. Except for HKIRC, all employees and members of the four bodies become public servants for the purpose of the Ordinance. For HKIRC, which is also added to Schedule 2 to the Ordinance, only the employees, office holders (other than honorary ones) and members who are vested with responsibility in conducting the affairs of HKIRC are public servants for the purpose of the Ordinance.

4. Public servants and public bodies are subject to provisions that prohibit the soliciting, accepting or offering of any advantage in relation to their work in the public body concerned and provisions that prohibit bribery and corrupt dealings with public bodies and public servants.

5. According to the Administration, it considered that all four bodies perform important public missions and fulfill one or more criteria (which includes receiving substantial public funds, being a monopoly or partial monopoly of a public service or being placed in a position of special trust by the Government) and should be listed in Schedule 1 to the Ordinance. The Administration further recommends HKIRC to be also added to Schedule 2.

6. The Panel on Information Technology and Broadcasting has not been consulted on the amendments. Upon an inquiry made by the Legal Service Division pursuant to paragraph 6 of the LegCo Brief<sup>1</sup> on whether the HKIRC has finished its consideration in consultation with the ICAC on the recommendation made by the Administration, the Government Chief Information Officer has confirmed that the HKIRC has finished its consideration and agreed to its inclusion in Schedule 2.

7. L.N. 38 will come into operation on 11 May 2012.

### **Companies Ordinance (Cap. 32)**

#### **Companies Ordinance (Amendment of Eighth Schedule) Order 2012 (L.N. 39)**

8. Section 360(3A) of the Companies Ordinance (Cap. 32) (the Ordinance) empowers the Financial Secretary, by order published in the Gazette, to amend the table of fees in the Eighth Schedule to the Ordinance. By virtue of section 3 of the Interpretation and General Clause Ordinance (Cap. 1), the Financial Secretary also means the Secretary for Financial Services and the Treasury.

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<sup>1</sup> The LegCo Brief dated March 2012 issued by the Commerce and Economic Development Bureau and Office of the Government Chief Information Officer (File Ref: GCIO 11/1/36 (C))

9. Section 304(1) of the Ordinance enables the Registrar of the Companies (Registrar) to collect fees as set out in the Eighth Schedule to the Ordinance. Under the Eighth Schedule, a local company having a share capital has to pay an ad valorem fee (referred to as capital duty) at a rate of \$1 for every \$1,000 or part thereof, subject to a cap of \$30,000 per case, on—

- (a) the amount of its nominal share capital for its registration as a company;
- (b) the increase in the amount of its nominal share capital after its incorporation; and
- (c) the amount of premiums if its shares are issued at a premium.

10. In the 2012-13 Budget Speech, the Financial Secretary has proposed to abolish capital duty levied on local companies. This order is made to implement the proposal. Companies which lodge the relevant documents with the Registrar for registration of a company, increase in nominal share capital or issuing shares at a premium on or after 1 June 2012 will benefit from the order.

11. Further, a textual error in the Chinese text of the Eighth Schedule is corrected.

12. The Panel on Financial Affairs was consulted on 2 March 2012 and supported the proposal. A member opined that, besides the proposal, the Administration should consider other measures to reduce the operating cost of small and medium sized enterprises. The Administration has replied that the Financial Secretary has also proposed in the 2012-13 Budget Speech to waive the business registration fee for the 2012-13 financial year. Members may wish to refer to LegCo Brief dated 14 March 2012 issued by the Financial Services Branch of the Financial Services and Treasury Bureau (File Ref: CBT/7/1/6C Part 11) for further information.

13. L.N. 39 will come into operation on 1 June 2012.

**Veterinary Surgeons Registration Ordinance (Cap. 529)**  
**Veterinary Surgeons Registration Ordinance (Amendment of Schedule 2)**  
**Order 2012 (L.N. 40)**

14. The Order is made by the Secretary for Food and Health pursuant to section 29(2) of the Veterinary Surgeons Registration Ordinance (Cap. 529) (the Ordinance) to amend Schedule 2 to the Ordinance.

15. Section 16(1) of the Ordinance provides that no person shall practise veterinary surgery or provide veterinary service in Hong Kong unless the person is a veterinary surgeon registered with the Veterinary Surgeons Board of Hong Kong and is the holder of a valid practising certificate. Any person who contravenes section 16 commits an offence and is liable to a fine of HK\$100,000 and imprisonment for one year. However, persons specified in Schedule 2, when performing acts specified in that Schedule, are exempted from the provisions of this Ordinance. Those persons and acts include the owner of an animal when treating it, any person who administered first-aid to an animal for the purpose of saving its life or relieving pain, medical practitioners or dentists carrying out any treatment, test or surgery on an animal provided that it is done at the request of a registered veterinary surgeon.

16. The Order amends Schedule 2 by-

- (a) adding new provisions to allow any individual working under the direction, supervision or direct and continuous supervision of a registered veterinary surgeon to perform certain veterinary acts;
- (b) amending its section 4 to allow an owner to perform minor acts to treat his/her animal only when such treatment is to provide a remedy for the animal or to prevent the animal from getting ill or being injured;
- (c) adding new provisions to allow necessary husbandry procedures which prevent the animal from getting any injury or disease and for better management and care of such animals to be performed by a licensed livestock farmer on animals kept by them in that capacity or by an owner on his/her fish; and
- (d) expanding the scope of veterinary acts from performing vaccination on animals to other veterinary acts, including the collection of samples from and implantation of identification devices on the animal, which may be performed by a person employed or retained by the Government.

17. According to the LegCo Brief, the Administration conducted public consultation on the amendment from September to October 2011. The Panel on Food Safety and Environmental Hygiene was consulted on 8 November 2011 and the members of the Panel generally expressed support for the proposal. Members may wish to refer to LegCo Brief (File Ref: FHB/F/6/12/12) dated March 2012 issued by the Food and Health Bureau and the Agriculture, Fisheries and Conservation Department for further information.

18. L.N. 40 will come into operation on 14 May 2012.

**Education Ordinance (Cap. 279)**

**Education Ordinance (Amendment of Schedule 3) Notice 2012 (L.N. 41)**

19. The Notice is made by the Secretary for Education (Secretary) under section 40AC(1) of the Education Ordinance (Cap. 279) (the Ordinance) to amend Schedule 3 to the Ordinance.

20. The Ordinance requires all aided schools to set up an Incorporated Management Committee (IMC) to allow key stakeholders to participate in the management of the school. However, Direct Subsidy Scheme schools (DSS schools) and schools listed in Schedule 3<sup>2</sup> can decide whether to apply to the Permanent Secretary for Education to set up an IMC.

21. According to the LegCo Brief dated March 2012 issued by the Education Bureau (File Ref: L/M(1) to EDB(SCR) 58/00 Pt 39), Diocesan Girls' Junior School (DGJS) has become eligible to be listed under Schedule 3 whereas Confucius Hall Middle School (CHMS) has ceased to be eligible. To up-date the Schedule, the Order adds DGJS to and removes CHMS from the Schedule.

22. According to the Administration, the amendment is to effect a factual update and public consultation is not necessary. The Panel on Education has not been consulted with the proposal. Members may wish to refer to LegCo Brief for further information.

23. L.N. 41 will come into operation on 11 May 2012.

**PART II LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT**

**United Nations Sanctions Ordinance (Cap. 537)**

**United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2012 (L.N. 42)**

**United Nations Sanctions (Afghanistan) Regulation 2012 (L.N. 43)**

**United Nations Sanctions (Afghanistan) Regulation (Repeal) Regulation (L.N. 44)**

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<sup>2</sup> Schools listed in Schedule 3 have met the requirements under section 40AC of the Ordinance. Such requirements include being either a secondary or primary school, which is neither an aided school nor a DSS school, and receives any subsidy from the Government.

24. L.N. 42, L.N. 43 and L.N. 44 were made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO) on the instruction of the Ministry of Foreign Affairs and after consultation with the Executive Council.

L.N. 42

25. Since February 2011, Security Council of the United Nations has (UNSC) expressed concerns over the situation at Libya (properly known as Libyan Arab Jamahiriya) and passed several resolutions imposing sanctions against Libyan authorities, and certain Libyan persons and entities. The United Nations Sanctions (Libya) Regulation 2011 (Cap. 537 sub. leg. AW) (Libya Regulation) was made to implement those resolutions.

26. Noting the improved situation in Libya but remained concerned with, among other things, the proliferation of arms, UNSC adopted Resolution 2009 (2011) and Resolution 2016 (2011) on 16 September 2011 and 27 October 2011 respectively. The two Resolutions relaxed certain prohibitions against the Libyan authorities and Libyan entities.

27. L.N. 42 was made to implement the two Resolutions by amending the Libya Regulation. L.N. 42 provides that, in respect of the prohibition against—

- (a) the supply, sale, transfer or carriage of arms of related materiel to Libya, the prohibition does not apply to, among other things, provision of arms or related materiel to the Libyan authorities and intended solely for security or disarmament;
- (b) the provision of assistance or training related to military activities, etc. in certain circumstances, the prohibition does not apply to, among other things, provision of assistance or training to the Libyan authorities and intended solely for security or disarmament assistance;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources, the prohibition does not apply to certain funds made available to certain Libyan entities for, among other things, humanitarian needs; and
- (d) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities, certain Libyan entities are exempted.

28. L.N. 42 also removes the following prohibitions from the Libya Regulation–

- (a) Hong Kong aircraft flying into Libya; and
- (b) Libyan aircraft to take off from or land in Hong Kong, or fly within the Hong Kong air space.

29. L.N. 42 came into effect on 16 March 2012, the date of its gazetted.

#### L.N. 43 and L.N.44

30. Since 1999, UNSC has passed several resolutions to impose sanctions against Afghanistan condemning the use of certain areas of Afghanistan controlled by the Taliban for the sheltering and training of terrorists and planning of terrorist acts. These sanctions have been implemented in Hong Kong through the United Nations Sanctions (Afghanistan) Regulation (Cap. 537 sub. leg. K) (Afghanistan Regulation) since June 2000.

31. Noting the security situation in Afghanistan has evolved and that some members of the Taliban have reconciled with the Government of Afghanistan and have rejected the terrorist ideology of Al-Qaida and its followers, UNSC considers that the situation in Afghanistan remains a threat to international peace and security. On 17 June 2011, UNSC adopted Resolution 1988 (2011), upon a review of the sanctions imposed since 1999.

32. According to the Administration, the structure and style of the Afghanistan Regulation are very different from other regulations made under UNSO.<sup>3</sup> Substantial amendments to the Afghanistan Regulation will be required to bring its structure and style in line with those of other regulations. The Administration considers that a new regulation should be made instead of amending the Afghanistan Regulation. L.N. 43 is therefore made to implement Resolution 1988. L.N. 43 provides the following prohibitions against–

- (a) the supply, sale, transfer or carriage of arms or related materiel to certain persons or entities;
- (b) the provision of technical advice, assistance or training related to military activities in certain circumstances;

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<sup>3</sup> For example, detailed provisions on the enforcement of the sanctions imposed by the resolutions of UNSC, which are found in more recent regulations made under UNSO, are absent from the Afghanistan Regulation.

- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and
- (e) entry into or transit through Hong Kong by certain persons.

33. With L.N. 43 in place, the Afghanistan Regulation is no longer needed. L.N. 44 is made to repeal the Afghanistan Regulation.

34. L.N. 43 and L.N. 44 will come into operation on 23 March 2012.

35. Members may refer to the papers prepared by the Commerce and Economic Development Bureau in March 2012 for the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee) (LC Paper No. CB(1)1338/11-12(01) and (02)) for further information on L.N. 42, L.N. 43 and L.N. 44.

36. Under section 3(5) of UNSO, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under UNSO. Therefore, L.N. 42, L.N. 43 and L.N. 44 are not subject to amendment by the Legislative Council. However, they come within the terms of reference of the Subcommittee. Members may consider referring L.N. 42, L.N. 43 and L.N. 44 to the Subcommittee for its consideration.

### **Concluding Remarks**

37. No difficulties have been identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

Prepared by

LEE Hoi-see, Evelyn (L.N. 38 – L.N. 41)

Kelvin Ka-yun LEE (L.N. 42 – L.N. 44)

Assistant Legal Advisers

Legislative Council Secretariat

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