

立法會
Legislative Council

LC Paper No. LS56/11-12

**Paper for the House Committee Meeting
on 4 May 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 April 2012**

Date of tabling in LegCo : 2 May 2012

Amendment to be made by : 30 May 2012 (or 20 June 2012 if extended by resolution)

PART I AMENDMENTS TO SUBSIDIARY LEGISLATION

Dangerous Goods Ordinance (Cap. 295)

Dangerous Goods (Application and Exemption) Regulation 2012 (L.N. 55)

Dangerous Goods (Shipping) Regulation 2012 (L.N. 56)

Background

According to the LegCo Brief, in order to improve the regulatory framework of dangerous goods and align it with commonly adopted international standards, the Dangerous Goods Ordinance (Cap. 295) (DGO) was amended and passed by the Legislative Council (LegCo) in 2002 (4 of 2002) but the Dangerous Goods (Amendment) Ordinance 2002 (the Amendment Ordinance) has yet to commence operation pending the setting out of detailed control mechanism in subsidiary legislation¹.

2. The Administration now introduces two pieces of subsidiary legislation, L.N. 55 (which defines the dangerous goods to be controlled on land) and L.N. 56 (which is the only regulation concerning the control at sea) (the

¹ The four existing regulations are -

- (a) Dangerous Goods (Application and Exemption) Regulations (Cap. 295 sub. leg. A) (DG(A&E)R);
- (b) Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B);
- (c) Dangerous Goods (Shipping) Regulations (Cap. 295 sub. leg. C) (DG(S)R); and
- (d) Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295 sub. leg. D).

Regulations), to replace the existing DG(A&E)R and DG(S)R respectively. L.N. 55 will have implications on the detailed control mechanism to be set out in other new regulations to be made.

L.N. 55 and L.N. 56

3. The Regulations are made by the Chief Executive in Council under section 5 of DGO. They will come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette, which will not be before the day appointed for the commencement of section 4 of the Amendment Ordinance.

4. L.N. 55 provides for the application of DGO to the dangerous goods specified in its Schedules and exempts, under specified circumstances, certain dangerous goods from the requirement of a licence for the storage, conveyance and use of dangerous goods, and from their marking and giving of notice of their characters. The main features of L.N. 55 include new classification of dangerous goods which largely adopts the classification system of the International Maritime Dangerous Goods Code (IMDG Code) and a new concept of dangerous goods in consumer packs, which specifies that certain types of dangerous goods commonly used by the general public (e.g. ethyl alcohol) and in the form of consumer packs will be exempted from the licence requirement if they do not exceed a certain quantity.

5. L.N. 56 provides for the control of dangerous goods being those specified in IMDG Code and L.N. 55 conveyed at sea. Its main features include codification of some current administrative measures, updated control and precautionary measures for handling or conveying dangerous goods on vessels and exemption of reasonable quantities of dangerous goods that are carried for personal medical use on a vessel from control.

6. At its meeting on 15 April 2005, the Panel on Security was consulted on the Administration's proposals to amend DG(A&E)R and DG(S)R. Members did not raise any specific issues regarding the legislative proposals.

7. According to paragraph 10 of the LegCo Brief, the Administration consulted the marine trade, including the barge operators, the Local Vessels Advisory Committee and Port Operations Committee on the proposal as reflected in L.N. 55 in December 2011 to February 2012. Further, the Administration consulted the Dangerous Goods Standing Committee and conducted 11 briefings for relevant parties, including Wholesale and Retail Task Force of the Business Facilitation Advisory Committee, relevant trades and the

general public on the proposal as reflected in L.N. 56. All of them do not have objection to the legislative proposals in general.

8. Members may wish to refer to the LegCo Brief (File ref.: SBCR 1/1336/86) issued by the Security Bureau in April 2012 for further information.

Ferry Services Ordinance (Cap. 104)
Ferry Services (The "Star" Ferry Company, Limited) (Determination of Fares) (Amendment) Order 2012 (L.N. 57)

9. The Amendment Order is made by the Chief Executive in Council under section 19(1) of the Ferry Services Ordinance (Cap. 104). It amends the Ferry Services (The "Star" Ferry Company, Limited) (Determination of Fares) Order (Cap. 104 sub. leg. C), in respect of fares chargeable by The "Star" Ferry Company, Limited (Star Ferry) on its two franchised ferry routes between Kowloon Point (i.e. Tsim Sha Tsui) and respectively, Central and Wan Chai, to -

- (a) increase the maximum fares for Saturdays, Sundays and public holidays (i.e. by \$0.4 for adult² and by \$0.3 for child³ between 3 and 12 years old⁴);
- (b) decrease the maximum fare for a tourist ticket⁵ by \$9 from \$34 to \$25; and
- (c) introduce a maximum fare for the carriage of bicycles (i.e. \$13 between Kowloon Point and Wan Chai).

10. According to the LegCo Brief, the weighted average rate of fare increase under the Amendment Order would be about 5.6%. The fares of Star Ferry's franchised ferry routes were last increased by phases on 29 March 2009 and 1 January 2010 by weighted average rates of 8.5% and 13.3% respectively. At the existing fares, Star Ferry will have a financial loss in 2012 and 2013.

² Hence, the adult fare between Kowloon Point and Wan Chai and for Upper Deck between Kowloon Point and Central is increased from \$3.0 to \$3.4 and for Lower Deck between Kowloon Point and Central is increased from \$2.4 to \$2.8.

³ Hence, the child fare between Kowloon Point and Wan Chai and for Upper Deck between Kowloon Point and Central is increased from \$1.8 to \$2.1 and for Lower Deck between Kowloon Point and Central is increased from \$1.7 to \$2.0.

⁴ Upon enquiry, the Administration indicated that it is the policy of Star Ferry to charge a passenger with disabilities at the same rate as a child between 3 and 12 years old, although it is not specified in the Ferry Services (The "Star" Ferry Company, Limited) (Determination of Fares) Order (Cap. 104 sub. leg. C).

⁵ Unlike the current tourist tickets, the proposed new tourist ticket fare will not be applicable to trams.

Further, an exceptional helping measure by the Government will be introduced to reimburse Star Ferry with the total revenue foregone arising from the offer of free rides for the elderly for "Central - Tsim Sha Tsui" ferry service in 2012 (upon the implementation of the new fares) and 2013. The amount of reimbursement to Star Ferry is estimated to be around \$3.78 million per annum after the fare increase.

11. The Panel on Transport was consulted on the Star Ferry's application for fare increases on 5 December 2011. The Panel discussed two proposals (i.e. Proposals I and II as stated in paragraph 2 of the LegCo Brief) submitted by Star Ferry to increase the fares of the two ferry services. Panel members in general supported Proposal II under which all weekday fares and monthly tickets of both of the two ferry routes would remain unchanged, but that the holiday (Saturday, Sunday and public holiday) fares would be increased by 20 to 30 cents. Under both proposals, Star Ferry applied to introduce a new bicycle fare of \$20 for the carriage of each bicycle on the Wan Chai - Tsim Sha Tsui ferry service. Panel members in general favoured Proposal II more because it would avoid impacting on commuters who needed to go to work by ferry on weekdays. Some members, however, expressed concern about the introduction of a new fare of \$20 for the carriage of each bicycle on the Wan Chai - Tsim Sha Tsui ferry service, and requested Star Ferry to review and propose a smaller amount. Members may wish to refer to the minutes of the relevant meeting of the Panel (LC Paper No. CB(1)1482/11-12) for details of the discussion.

12. The Transport Advisory Committee (TAC) was consulted on 24 February 2012. TAC considered all the relevant factors and supported the rates of fare increase recommended by the Administration as reflected in the Amendment Order, the exceptional helping measure in paragraph 10 above, the delinking of Star Ferry's existing tourist ticket with the tram service, and the introduction of the new bicycle fare.

13. The Amendment Order will come into operation on 24 June 2012.

14. Members may wish to refer to the LegCo Brief (File ref.: THB(T) CR1/5591/76 Pt.30) issued by the Transport and Housing Bureau in April 2012 for further information.

Fire Services Ordinance (Cap. 95)
Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012
(L.N. 58)

Police Force Ordinance (Cap. 232)
Police (Discipline) Regulations (Cap. 232 sub. leg. A)
Police (Discipline) (Amendment) Regulation 2012 (L.N. 59)

Prisons Ordinance (Cap. 234)
Prison Rules (Cap. 234 sub. leg. A)
Prison (Amendment) Rules 2012 (L.N. 60)

Government Flying Service Ordinance (Cap. 322)
Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A)
Government Flying Service (Discipline) (Amendment) Regulation 2012
(L.N. 61)

Road Traffic Ordinance (Cap. 374)
Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J)
Traffic Wardens (Discipline) (Amendment) Regulation 2012 (L.N. 62)

Customs and Excise Service Ordinance (Cap. 342)
Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B)
Customs and Excise Service (Discipline) (Amendment) Rules 2012 (L.N. 63)

Background

15. At present, formal disciplinary action in respect of civil servants in civilian grades and generally senior ranking civil servants in the disciplined services grades is taken in accordance with the provisions laid down in the Public Service (Administration) Order and the Public Service (Disciplinary) Regulation. Disciplinary matters of middle and junior ranking civil servants in the disciplined services grades are governed by the Ordinances on respective disciplined services, namely, Customs and Excise Service Ordinance (Cap. 342), Fire Services Ordinance (Cap. 95), Government Flying Service Ordinance (Cap. 322), Immigration Service Ordinance (Cap. 331), Police Force Ordinance (Cap. 232), and Prisons Ordinance (Cap. 234), and rules and regulations made under such Ordinances and the Traffic Wardens (Discipline) Regulation (Cap. 374 sub. leg. J) (collectively referred to as Disciplined Services Legislation). Regulation 9(11) and (12) of the Police (Discipline) Regulations (Cap. 232 sub. leg. A) (P(D)R) expressly prohibit legal representation for a police officer charged with a disciplinary offence. Similar provisions are found in the Customs and Excise

Service (Discipline) Rules (Cap. 342 sub. leg. B) and the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J).

16. L.N. 58 to L.N. 63 were made after a review had been conducted by the Administration on the Disciplined Services Legislation following the decision of the Court of Final Appeal (CFA) in *Lam Siu Po v. Commissioner of Police* [2009] 4 HKLRD 575 in March 2009 in which CFA held that the prohibition against legal representation provided in regulation 9(11) and (12) of the P(D)R is inconsistent with Article 10 of the Hong Kong Bill of Rights⁶ (HKBoR), and is thus unconstitutional, null and void. The CFA also held that legal representation is a matter for the disciplinary authority to consider under its discretion in accordance with the principle of fairness in common law⁷ and that the disciplinary authority ought to be able to exercise discretion to permit appropriate forms of representation other than legal representation, whether by fellow officers or other persons, at a disciplinary hearing.

17. The amendments made by L.N. 58 to L.N. 63 are summarized in the following paragraphs.

L.N. 58 to L.N. 63

18. L.N. 58 to L.N. 63 amend six items of subsidiary legislation on discipline made under the Disciplined Services Legislation governing the relevant disciplined services, namely, Second Schedule to the Fire Services Ordinance (Cap. 95), P(D)R, the Prison Rules (Cap. 234 sub. leg. A), the Government Flying Service (Discipline) Regulation (Cap. 322 sub. leg. A) (GFS(D)R), the Customs and Excise Service (Discipline) Rules (Cap. 342 sub. leg. B) and the Traffic Wardens (Discipline) Regulations (Cap. 374 sub. leg. J) (TW(D)R (collectively referred to as "Subsidiary Regulations"). The amendments applicable to all Subsidiary Regulations are as follows -

- (a) an officer of the relevant disciplined service charged with a disciplinary offence (accused) may, on application, be allowed to have legal or other forms of representation at a disciplinary hearing where the principle of fairness so requires, while the accused is still

⁶ Article 10 of BoR provides (insofar as material): "All persons shall be equal before the courts and tribunal. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

⁷ In the *Stock Exchange of Hong Kong Ltd. v New World Development Co Ltd.* (2006) 9 HKCFAR 234, the CFA held that the factors to be taken into account in deciding whether fairness requires legal representation to be permitted include - seriousness of the charge, potential penalty, whether legal issues are likely to arise, the capacity of the individual to present one's own case, procedural difficulty, the need for reasonable speed in making the adjudication, and the need for fairness among the individuals concerned.

required to attend the hearing in person if he/she is legally represented;

- (b) a written record of the proceedings of a disciplinary hearing is to be made and the adjudicating officer/tribunal may cause an audio recording or an audio and visual recording of the whole or part of a disciplinary hearing to be made; and
- (c) to make explicit provisions stipulating that an adjudicating officer/tribunal may proceed with any part of the disciplinary proceedings in absence of an accused if the accused is required to appear in those proceedings but, without reasonable justifications, repeatedly fails to appear.

L.N. 59

19. In addition to the above amendments made to P(D)R, L.N. 59 makes further amendments to P(D)R, which are summarized below -

- (a) to remove the prohibition of representation of a junior police officer or an inspector by another person in proceedings against him or her in respect of minor disciplinary offences;
- (b) to transfer the power to appoint a board to be a tribunal from the Chief Secretary for Administration to the Secretary for the Civil Service, and the function to communicate the Chief Executive's decision on an appeal made by an inspector in accordance with P(D)R from the Chief Secretary for Administration to the Chief Executive's Office;
- (c) to align certain arrangements and procedures of disciplinary proceedings for junior police officers under Part II of P(D)R with those for inspectors under Part III of P(D)R; and
- (d) to replace the word "calculated" (刻意致使) in the offence of "conduct calculated to bring the public service into disrepute" by "likely (相當可能令)" to make it clear that the offence may be established without a subjective intention on the part of the accused to bring the public service into disrepute⁸.

⁸ According to paragraph 12 of LegCo Brief issued by Civil Service Bureau on 25 April 2012 (File Ref: CSBCR/DP/1-010-005/6), the Court of Appeal ruled in *Chiu Hoi Po v. Commissioner of Police* (CACV 200/2006) that the English word "calculated" in the said disciplinary offence meant "likely" in the context of PD(D)R.

L.N. 61

20. In addition to the amendments mentioned in paragraph 18 above, L.N. 61 also repeals section 3(7) of GFS(D)R which provides that an officer of the Government Flying Service who is interdicted may not leave Hong Kong without the permission of the Controller of the Government Flying Service. According to paragraph 20 of the LegCo Brief issued by Civil Service Bureau on 25 April 2012 (File Ref: CSBCR/DP/1-010-005/6), this amendment was made as the Administration considers that section 3(7) of GFS(D)R may not be compatible with Article 31 of the Basic Law⁹ and Article 8(2) of the HKBoR¹⁰ concerning freedom to travel. By virtue of L.N. 61, the restriction against leaving Hong Kong by an officer of the Government Flying Service under interdiction is removed.

L.N. 62

21. In addition to the amendments set out in paragraph 18 above, L.N. 62 makes further amendments to TW(D)R as follows -

- (a) to replace the word "calculated" (刻意作出使) in the disciplinary offence of "conduct calculated to bring the public service into disrepute" by "likely"(作出相當可能令) to make it clear that the offence may be established without a subjective intention on the part of the accused to bring the public service into disrepute;
- (b) to amend the disciplinary procedure so that an accused traffic warden, instead of a prosecutor, is to have the final address at a disciplinary hearing; and
- (c) to add to TW(D)R "deferment or stoppage of increment" as a possible punishment for the contravention of a disciplinary offences by a traffic warden.

22. L.N. 58 to L.N. 63 come into operation on a day to be appointed by the Secretary for the Civil Service by notice published in the Gazette.

⁹ Article 31 of the Basic Law stipulates that "Hong Kong Residents shall have freedom of movement within the Hong Kong Special Administrative Region and freedom of emigration to other countries and regions. They shall have freedom to travel and to enter or leave the Region. Unless restrained by law, holder of valid travel documents shall be free to leave the Region without special authorization."

¹⁰ Article 8(2) of HKBoR stipulates that "Everyone shall be free to leave Hong Kong."

23. Members may wish to refer to the LegCo Brief for further information. According to paragraph 26 of the LegCo Brief, the Administration conducted three rounds of consultation with the staff associations of the relevant disciplinary services in May 2010, December 2010 and January 2012. The staff sides generally support the proposals, though some staff associations have asked for further improvements to the disciplinary mechanism for which the Administration will consider in the next phase of review of the disciplinary mechanism.

24. The Panel on Public Service was consulted on the proposed amendments to the subsidiary legislation on 20 December 2010. While the Panel did not object to the proposal, members raised a number of concerns, including whether the factors for considering an application by a defaulter for legal representation at the disciplinary hearings might be too demanding and whether the accused officer would be allowed to appeal against decisions made in his/her absence.

25. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 58 to L.N. 63 and will make a further report if necessary.

Dutiable Commodities Ordinance (Cap. 109)

Dutiable Commodities (Amendment) Regulation 2012 (L.N. 64)

Firearms and Ammunition Ordinance (Cap. 238)

Firearms and Ammunition (Amendment) Regulation 2012 (L.N. 65)

Firearms and Ammunition (Storage Fees) (Amendment) Order 2012 (L.N. 66)

Pawnbrokers Ordinance (Cap. 166)

Pawnbrokers (Amendment) Regulation 2012 (L.N. 67)

Massage Establishments Ordinance (Cap. 266)

Massage Establishments (Amendment) Regulation 2012 (L.N. 68)

26. The Amendment Regulations and Order are made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) to revise certain fees and charges.

27. According to the LegCo Brief, it is the Government's established policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services. The latest

costing review at 2012-13 prices shows that the fees payable under the Amendment Regulations and Order are not adequate to recover the full cost of providing the services. To alleviate the impact of the fee increases on the users of the services concerned, the proposed fees will be increased by 10% to 21%, with a view to achieving full-cost recovery within one to seven years. All of the fees shown below were last increased on 11 July 2008.

L.N. 64

28. The fee for the issue of a temporary liquor licence is prescribed in item 6 of Part II of the Schedule to the Dutiable Commodities Regulations (Cap. 109 sub. leg. A). By L.N. 64, the fee is increased from \$385 to \$445.

L.N. 65

29. L.N. 65 amends the Second Schedule to the Firearms and Ammunition Regulation (Cap. 238 sub. leg. A) to increase the prescribed fees for nine items which include -

- (a) the grant of an exemption to a person from holding a licence for possessing arms and ammunition;
- (b) the issue or renewal of a licence for possession or a dealer's licence;
- (c) the amendment of a licence or condition of a licence; and
- (d) the replacement of a licence or an exemption.

L.N. 66

30. L.N. 66 amends the Schedule to the Firearms and Ammunition (Storage Fees) Order (Cap. 238 sub. leg. B) to increase the prescribed fees for four items :-

- (a) the storage of arms (from \$120 to \$140);
- (b) the storage of imitation firearms (from \$120 to \$140);
- (c) the storage of ammunition (from \$120 to \$140); and

- (d) the storage of arms and ammunition awaiting transshipment (from \$93 to \$105).

L.N. 67

31. L.N. 67 amends Part I of the Second Schedule to the Pawnbrokers Regulations (Cap. 166 sub. leg. A) by increasing the fee payable for the grant or renewal of a licence to a person to carry on business as a pawnbroker from \$3,810 to \$4,190.

L.N. 68

32. L.N. 68 amends Schedule 2 to the Massage Establishments Regulations (Cap. 266 sub. leg. A) to increase the fees payable for the issue (from \$7,370 to \$8,480) or renewal (from \$3,000 to \$3,300) of a licence to operate a massage establishment.

33. All the Amendment Regulations and Order will come into operation on 22 June 2012.

34. The Administration's paper on its proposed revision of fees and charges under the Amendment Regulations and Order (LC Paper No. CB(2)1502/11-12(01)) was circulated to members of the Panel on Security on 26 March 2012. No member considered it necessary to discuss the proposals.

35. Members may refer to the LegCo Brief (File ref.: SBCR 1/4/2801/85) issued by the Security Bureau in April 2012 for further information.

Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607) Genetically Modified Organisms (Control of Release) (Exemption) Notice (L.N. 69)

36. The Notice is made by the Secretary for the Environment (the Secretary) under section 46 of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607) (the Ordinance).

37. The Notice exempts genetically modified papaya (GM papaya) and any genetically modified organism (GMO¹¹) that is contained in a veterinary

¹¹ Under section 2 of the Ordinance, GMO means a living organism that possesses a novel combination of genetic materials obtained through the use of modern biotechnology.

vaccine from the application of section 5 of the Ordinance¹² and two varieties of GM papaya (i.e. GM papaya with the unique identifier code of CUH-CP551-8 or with the transformation event code of Huanong 1) and any GMO that is contained in a veterinary vaccine from the application of section 7 of the Ordinance¹³.

38. According to the risk assessment conducted by the Agriculture, Fisheries and Conservation Department (AFCD) on the possible adverse effect of GM papaya on the conservation and sustainable use of biological diversity in the local environment and the possible adverse biosafety effect of live recombinant veterinary vaccines on the local natural environment as indicated in paragraphs 6 and 11 of the LegCo Brief respectively, AFCD concluded that the possible adverse biosafety effect that may result from granting exemption to GM papaya and the live recombinant veterinary vaccines under the Ordinance is acceptable. Such conclusion was supported by the Expert Group, which is established under section 47 of the Ordinance to advise on the administration of the Ordinance including exemption arrangements.

39. The Notice will come into operation on 23 June 2012.

40. The Notice in draft was discussed by the Panel on Environmental Affairs (the Panel) at its meetings on 28 November 2011 and 26 March 2012. When the original proposal to exempt all varieties of GM papayas (including new varieties) was discussed at the Panel meeting on 28 November 2011, some members had expressed reservation on the blanket exemption since the biosafety effect of new varieties of GM papayas on the local biological diversity was unknown. In response to comments from the Panel and some interested groups, the Administration had further consulted relevant stakeholders and revised the proposal to exempt all varieties of GM papayas from the application of section 5 of the Ordinance, and to exempt only two commercialized varieties of GM papayas from the application of section 7 of the Ordinance. A revised proposal was discussed at the Panel meeting on 26 March 2012. Some members held the view that in the absence of information on the potential biosafety risk of existing and new varieties of GM papayas to the local biological diversity, it would be more prudent for the Administration to include in the relevant subsidiary legislation a schedule of GM papayas to be exempted

¹² Section 5 provides that a person must not knowingly cause a GMO to be released into the environment or maintain the life of a GMO that is in a state of being released into the environment (subject to conditions specified in section 5(4)). If a person fails to comply with section 5, the person will be liable to a fine at level 6 and to imprisonment for one year.

¹³ Section 7 provides that a person must not knowingly import a GMO that is intended for release into the environment (subject to conditions specified in section 7(2)(a) to (c)). If a person fails to comply with section 7, the person will be liable to a fine at level 6 and to imprisonment for one year.

rather than exempting all varieties of GM papayas from the application of section 5 of the Ordinance. The schedule could be updated as and when necessary. Such view is not reflected in L.N. 69. According to the Administration, due to the prevalence of GM papaya growing in the local environment and the environment risk is negligible, exempting only certain varieties of GM papayas would cause unjustifiable nuisance and disturbance to the public. Members may refer to paragraphs 17 to 19 of the paper (LC Paper No. CB(1) 1370/11-12(03)) issued by the Administration in March 2012 for details.

41. Members may refer to the LegCo Brief (File ref.: EP CR 9/150/26) issued by the Environmental Protection Department and the Agriculture, Fisheries and Conservation Department on 25 April 2012 for further information.

Legal Practitioners (Amendment) Ordinance 2010 (2 of 2010)
Legal Practitioners (Amendment) Ordinance 2010 (Commencement)
Notice 2012 (L.N. 70)

42. By the Notice made under section 2 of the Legal Practitioners (Amendment) Ordinance 2010 (2 of 2010) (LPAO) which was enacted on 20 January 2010, the Secretary for Justice appoints 22 June 2012 as the day on which section 4 (insofar as it relates to sections 39H, 39I, 39J, 39K, 39L, 39M, 39N, 39O, 39P, 39Q and 39R of the new Part IIIB of the Legal Practitioners Ordinance (Cap. 159)) comes into operation. These provisions relate to the Higher Rights Assessment Board (the Board)'s determination of an application for higher rights of audience before the High Court and the Court of Final Appeal in civil and criminal proceedings (higher rights), the eligibility requirements, the conditions for granting the application, the loss of higher rights, the cessation and re-acquisition of higher rights, the keeping of a list of solicitors having higher rights, and the issuance of higher rights certificates and a code of conduct for solicitor advocates.

43. Other provisions of LPAO, which relate to, inter alia, the establishment, the terms of appointment of members and the procedures for meetings of the Board, came into operation on 2 July 2010 (L.N. 51 of 2010).

44. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)666/09-10) for further information.

45. At its meeting on 30 January 2012, the Panel on Administration of Justice and Legal Services was consulted on the proposed Higher Rights of Audience Rules. According to the Board, the proposed Rules (gazetted on 23 March 2012 as L.N. 47 of 2012) would come into operation on the day on which the relevant sections of the new Part IIIB stated in the Notice come into operation, that is 22 June 2012.

Concluding observation

46. Except L.N. 58 to L.N. 63 as stated in paragraph 25 above, no difficulties have been identified in the legal or drafting aspects of the above items of subsidiary legislation.

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

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Liberia) Regulation 2012 (L.N. 71)

United Nations Sanctions (Liberia) Regulation 2011 (Repeal) Regulation (L.N. 72)

47. L.N. 71 and L.N. 72 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.

48. Since March 2001, the United Nations Security Council (UNSC) has adopted several resolutions imposing sanctions against Liberia in view of the country's support for armed rebel groups in neighbouring countries which constitutes a threat to international peace and security in the region. Among these resolutions, the UNSC Resolution 1532 (2004) as adopted by the UNSC on 12 March 2004 relates to sanctions by financial measures. The relevant UNSC resolutions have been implemented in the Hong Kong Special Administrative Region (HKSAR) by regulations made under UNSO, the most recent one being the United Nations Sanctions (Liberia) Regulation 2011 (Cap. 537 sub. leg. AU) (the 2011 Liberia Regulation). All provisions in the 2011 Liberia Regulation, except for those relating to financial sanctions (including prohibition, licensing and law enforcement provisions), expired at midnight on 16 December 2011.

49. L.N. 71 was made to give effect to the decision of the UNSC in Resolution 2025 (2011) as adopted by the UNSC on 14 December 2011 in respect of Liberia to renew or continue the prohibition against –

- (a) the supply, sale, transfer or carriage of arms or related materiel to certain persons (operating in the territory of Liberia);
- (b) the provision to certain persons of advice, assistance or training related to military activities in certain circumstances; and
- (c) entry into or transit through HKSAR by certain persons.

50. L.N. 71 also continues to give effect to a decision of the UNSC in Resolution 1532 (2004) as adopted by UNSC on 12 March 2004 by providing for the prohibition against -

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources; and
- (b) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities.

51. The provisions of L.N. 71, which renew or continue the implementation of sanctions against Liberia, are similar to the provisions in the 2011 Liberia Regulation. Under section 33 of L.N. 71, the provisions which relate to the prohibition mentioned in the paragraph 49 (a) to (c) above will expire at midnight on 13 December 2012.

52. L.N. 72 repeals the 2011 Liberia Regulation consequential upon the making of L.N. 71.

53. Except those provisions that relate to financial sanctions (i.e. sections 6 and 11), L.N. 71 came into operation when it was published in the Gazette on 27 April 2012. L.N. 72 and sections 6 and 11 of L.N. 71 will come into operation on 4 May 2012.

54. According to the information paper provided by the Administration on L.N. 71 and L.N. 72 (LC Paper No. CB(1) 1731/11-12(01), sections 6 and 11 of L.N. 71 and L.N. 72 come into operation one week after other provisions of L.N. 71 come into operation to allow time for the Chief Executive to specify a new list of persons or relevant entities under section 31 of L.N. 71 for the

purposes of the financial sanctions before the current name list specified under the 2011 Liberia Regulation is repealed.

55. Under section 3(5) of UNSO, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) do not apply to regulations made under UNSO. Therefore, L.N. 71 and L.N. 72 are not required to be tabled in the Legislative Council (LegCo) and are not subject to amendment by LegCo. However, since they come within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions, Members may consider referring them to the Subcommittee for its consideration.

Prepared by

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3 May 2012