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**Paper for the House Committee Meeting
on 18 May 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 11 May 2012**

Date of tabling in LegCo : 16 May 2012

Amendment to be made by : 13 June 2012 (or 4 July 2012 if extended by resolution)

Land Survey Ordinance (Cap. 473)

Land Survey (Fees) (Amendment) Regulation 2012 (L.N. 87)

L.N. 87 is made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 37 of the Land Survey Ordinance (Cap. 473) to amend the Schedule to the Land Survey (Fees) Regulation (Cap. 473 sub. leg. A) (the Regulation) for increasing the fees as set out below-

Item in the Schedule	Fee Description	Existing Fee (\$)	Revised Fee (\$)
1(a)	inspection of land boundary record for each land boundary plan included in the record	57	63
1(b)	inspection of land boundary record for each survey record plan included in the record	57	63
2(a)	supply of each copy of land boundary plan	79	87
2(b)	supply of each copy of survey record plan	79	87
3	deposit of land boundary plan and corresponding survey record plan with the Land Survey Authority	2,710	2,980
4	registration as an authorized land surveyor	4,400	4,840
5	renewal of registration as an authorized land surveyor	770	845

2. The fees payable under the Regulation were first introduced in 1995 and last revised in 2009. According to the LegCo Brief dated May 2012 issued by the Development Bureau (no reference number provided), it is the policy of the Administration that fees should generally be set at levels sufficient to recover the full costs of providing the services in line with the "user pays" principle. In view of the costing exercises at the 2012-13 price level and in order to achieve full cost recovery gradually and avoid a steep fee increase, the Administration seeks to increase by about 10% the above fee items as set out in the table.

3. L.N. 87 will come into operation on 1 August 2012.

4. The Administration briefed the Panel on Development on 24 April 2012 on the fee increase proposal. Members raised no objection. They called on the Administration to explore room for reduction of the fees in future.

Road Traffic Ordinance (Cap. 374)

Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2012 (L.N. 88)

5. L.N. 88 is made by the Secretary for Transport and Housing under section 6 of the Road Traffic Ordinance (Cap. 374) to amend the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) (the principal Regulations) so as to -

- (a) introduce a new type of trade licence to facilitate the re-export trade of left-hand drive (LHD) vehicles;
- (b) improve the control mechanism to prevent abuse in the use of trade licences; and
- (c) address other issues related to trade licences and make technical amendments.

New trade licence for the re-export trade of LHD vehicles

6. At present, re-exporters of LHD vehicles, unlike local car dealers, cannot use trade licences in their re-export operations under the principal Regulations. Under the existing law, a movement permit is required for each and every LHD vehicle to be driven in transit on Hong Kong roads for the purposes of examination or modification, or delivery to the ports. A fee of \$560 is payable for each such permit.

7. According to paragraph 4 of the LegCo Brief (File Ref: THB(T)L3/7/39) of May 2012 issued by the Transport and Housing Bureau, the trade claimed that the arrangement had caused inconvenience and increased cost to them. In order to facilitate the operation of the LHD vehicle re-export trade, L.N. 88 introduces a new type of trade licence that can be used on LHD vehicles for re-export to a place outside Hong Kong. Restrictions will be imposed on the use of this new trade licence such as the vehicles must be imported into Hong Kong not more than 12 months ago. L.N. 88 also specifies a different colour scheme for the plate of this new trade licence from that for the plate of the existing trade licence for non-LHD vehicles.

Improvements to the control mechanism to prevent abuse in the use of trade licences

8. According to the Administration, there have been calls to tighten the control mechanism to more effectively prevent abuse in the use of trade licences. Examples of abuse include using a trade licence on an unregistered and unlicensed multi-million dollar sport car for joy ride in Hong Kong, claiming to be for a permitted purpose of the trade licence. The existing law does not prescribe how the register of journeys should be kept by a trade licence holder and does not require it to be carried on board the vehicle for which the trade licence is used. This has made enforcement by the Police difficult.

9. In view of the above concerns, L.N. 88 provides that if the holder of a trade licence authorizes a person to use the trade licence (the authorized user), the holder must maintain a detailed authorization record and must produce the authorization record for inspection on request by a police officer or the Commissioner for Transport (the Commissioner). Detailed requirements in relation to the keeping of the register of journeys are also specified. Further, an authorized user must carry on board the vehicle a written authorization given by the trade licence holder and a duplicate copy of the relevant register of journeys for inspection on request by any police officer or the Commissioner. A person who without reasonable excuse contravenes any of these requirements commits an offence and is liable to a fine of \$2,000.

Other amendments

10. A person who wishes to drive a motor vehicle on a road closed in accordance with the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) may apply for a closed road permit (CRP). Under the current regime, a CRP may not be issued in respect of a vehicle which is not registered and has no vehicle registration mark. According to paragraph 13 of the LegCo Brief, there would be a need for driving unregistered LHD vehicles to the Lok Ma Chau Control Point for re-export and similarly for driving unregistered

non-LHD vehicles for import via land. To facilitate the trade's operation, L.N. 88 provides for the issue of CRP for driving an unregistered vehicle in connection with a trade licence on a closed road within a boundary control point specified in the permit.

11. Similarly, the registered owner of a motor vehicle which is not permitted to be used or driven on an expressway under regulation 4(1) of the Road Traffic (Expressway) Regulations (Cap. 374 sub. leg. Q) may apply for an expressway permit (EP) for driving the vehicle on an expressway. The existing legal framework, however, provides that an EP may not be issued for a vehicle which is not registered and has no vehicle registration mark. As the Administration considers that there is a genuine need for certain unregistered vehicles used under trade licences to be driven on expressways, L.N. 88 provides for the issue of EP for driving an unregistered vehicle in connection with a trade licence on an expressway.

12. L.N. 88 also clarifies the requirements on the display of trade plates and the permitted uses of trade licences, and introduces some technical amendments to the principal Regulations.

Commencement and consultation

13. L.N. 88 will come into operation on 9 July 2012.

14. According to the LegCo Brief, the Administration consulted the trade and the trade generally welcomed the proposals to facilitate the LHD vehicle re-export trade and to improve the regulatory mechanism of trade licences. The Administration also consulted the Transport Advisory Committee on the proposals at its meeting on 29 November 2011 and members were supportive of the proposals in general.

15. At the meeting of the Panel on Transport on 6 February 2012 to discuss the Administration's proposals, some members expressed concern about the traffic impact of the proposal to allow LHD vehicles on transit to stay in Hong Kong for up to 12 months, as well as measures to prevent abuse in the use of the current and the new trade licences. At the request of the Panel, the Administration has provided a supplementary information paper (LC Paper No. CB(1)1717/11-12(01)) dated April 2012 on the origins and types of LHD vehicles for re-export through Hong Kong, and the penalty for abuse of the use of a trade licence.

Waterworks Ordinance (Cap. 102)

Waterworks (Amendment) Regulation 2012 (L.N. 89)

16. L.N. 89 is made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses

Ordinance (Cap. 1) by virtue of section 37 of the Waterworks Ordinance (Cap. 102). It seeks to increase 24 items of fees and charges as specified in Schedule 1 to the Waterworks Regulations (Cap. 102 sub. leg. A) for provision of the following services -

- (a) making a connection to the main and installing (including reinstatement of the ground surface) the part of a fire service or inside service on land held by the Government for pipe size up to and including 40 mm in diameter;
- (b) reconnecting a fire service or inside service;
- (c) providing and installing a meter;
- (d) providing a meter;
- (e) resealing a fire service or meter;
- (f) testing a meter or a private check meter (including removal and refixing);
- (g) plumber's licence issuance, renewal and examination;
- (h) fishing licence issuance;
- (i) examination of a water sample; and
- (j) each attendance to collect any sample or samples.

17. The increase, ranging from 8.3% to 20.1%, is to achieve full cost recovery gradually and to avoid a steep fee increase, taking into account the result of the review of the cost of providing the relevant services at the 2012-13 price level. According to the LegCo Brief dated May 2012 issued by the Development Bureau (no reference number provided), 17 items were last revised in 2011, six items in 2001 and one item in 1998.

18. L.N. 89 will come into operation on 1 August 2012.

19. Members may refer to the LegCo Brief for details of the fees and charges revision and a comparison of the existing and revised fees and charges.

20. The Administration briefed the Panel on Development on 24 April 2012 on the proposal to revise the above items of fees and charges. Members raised no objection.

Electronic Transactions Ordinance (Cap. 553)

Electronic Transactions (Exclusion) (Amendment) Order 2012 (L.N. 90)

21. L.N. 90 is made by the Permanent Secretary for Commerce and Economic Development (Communications and Technology) under section 11(1) of the Electronic Transactions Ordinance (Cap. 553) (ETO) to repeal a number of exemptions currently provided under the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (the Exclusion Order) from the application of sections 5, 6 and 8 of ETO.

Section 5 of ETO

22. Section 5 of ETO provides that if a rule of law requires or permits information to be or given in writing, an electronic record satisfies that rule of law if the information contained in the electronic record is accessible so as to be usable for subsequent reference. The statutory provisions excluded from the application of section 5 of ETO are specified in Schedule 1 to the Exclusion Order.

23. L.N. 90 removes 25 currently exempted statutory provisions from Schedule 1 to the Exclusion Order, being provisions that relate to submissions or applications under the Buildings Ordinance (Cap. 123) and the Environmental Impact Assessment Ordinance (Cap. 499) and submissions of aviation-related documents under the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) (the DG(CA)(S) Regulations). Electronic records may henceforth be used for the purposes of these statutory provisions. An exempted provision under the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F) is also removed from Schedule 1 to the Exclusion Order because that provision has already been repealed by the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2007 (L.N. 79 of 2007).

Section 6 of ETO

24. Section 6 of ETO provides that if a rule of law requires the signature of a person on a document, an electronic or digital signature of that person satisfies that requirement if the conditions set out in section 6 are complied with. The statutory provisions excluded from the application of section 6 of ETO are listed in Schedule 2 to the Exclusion Order.

25. L.N. 90 deletes 6 currently exempted provisions from Schedule 2 to the Exclusion Order that deal with submissions of buildings-related applications under the Building (Administration) Regulations (Cap. 123 sub. leg. A) and aviation-related documents under the DG(CA)(S) Regulations.

Accordingly, electronic or digital signatures in respect of these statutory provisions may be used.

Section 8 of ETO

26. Section 8 of ETO provides that if a rule of law requires certain information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records containing the information provided that the conditions set out in the section are complied with. The statutory provisions excluded from the application of section 8 of ETO are contained in Schedule 4 to the Exclusion Order.

27. L.N. 90 repeals Regulation 4 in Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) that concerns submissions of aviation-related documents. The repeal is set out in Schedule 4 to the Exclusion Order. As a result, electronic records of such documents may be retained.

Commencement and other remarks

28. L.N. 90 will come into operation on 1 August 2012.

29. Members may refer to the LegCo Brief (File Ref: GCIO 107/4/3 XXIII) dated May 2012 issued by the Office of the Government Chief Information Officer and the Commerce and Economic Development Bureau for background of the Exclusion Order and the details of the exempted statutory provisions to be deleted from the Exclusion Order as explained in Annex B of that Brief.

30. The Panel on Commerce and Industry and the Panel on Information Technology and Broadcasting have not been consulted.

Hong Kong Court of Final Appeal Ordinance (Cap. 484)
Hong Kong Court of Final Appeal (Amendment) Rules 2012 (L.N. 91)

High Court Ordinance (Cap. 4)
Rules of the High Court (Amendment) Rules 2012 (L.N. 92)

District Court Ordinance (Cap. 336)
Rules of the District Court (Amendment) Rules 2012 (L.N. 93)

31. Pursuant to rule 63(1) of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) (RCFA), Order 64, rule 7(1) of the Rules of the High Court (Cap. 4 sub. leg. A) (RHC) and Order 64, rule 1(1) of the Rules of the District Court (Cap. 336 sub. leg. H) (RDC), the offices of the Court of

Final Appeal (CFA), the High Court (HC) and the District Court (DC) are not required to be open to the public on the afternoon of Christmas Eve and Lunar New Year's Eve.

32. According to paragraph 3 of the LegCo Brief (File Ref: JUD ADM 1-10/3) dated May 2012 issued by the Judiciary Administration, some of these offices, notwithstanding the provisions referred to in paragraph 31 above, continue their public services on those afternoons, on the basis of other legislative provisions, to handle the following matters -

- (a) work related to criminal proceedings (as set out in Order 1, rule 2(3) of RHC and Order 1, rule 2(3) of the RDC); and
- (b) payment out made in respect of money previously lodged in the court, such as money lodged as security against possible default on legal costs (as set out in rule 8(2) of the High Court Suitors' Funds Rules (Cap. 4 sub. leg. B) and rule 8(2) of the District Court Suitors' Funds Rules (Cap. 336 sub. leg. E)).

33. In order to improve services for court users and provide consistency, L.N. 91 to 93 amend RCFA, RHC and RDC respectively so that the offices of CFA, HC and DC stay open on the afternoon of Christmas Eve and Lunar New Year's Eve, if the Christmas Eve or the Lunar New Year's Eve is not a Saturday, a Sunday, a general holiday under the General Holidays Ordinance (Cap. 149) or such other day as the Chief Justice may direct.

34. L.N. 91 to 93 will come into operation on 13 July 2012.

35. According to paragraph 9 of the LegCo Brief, the Judiciary Administration had consulted the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Law Costs Draftsmen Association and they all supported the proposal.

36. The Judiciary Administration provided an information paper on the proposal to the Panel on Administration of Justice and Legal Services (LC Paper No. CB(2)1320/11-12(01)) in March 2012. No member requested to discuss the paper at a Panel's meeting.

Securities and Futures Ordinance (Cap. 571)
Securities and Futures Ordinance (Amendment of Schedule 1) Notice 2012
(L.N. 94)

37. L.N. 94 is made by the Securities and Futures Commission (SFC) under section 2(3) of the Securities and Futures Ordinance (Cap. 571) (SFO) to

repeal Parts 2 and 3 of Schedule 1 to SFO and substitute new Parts 2 and 3. The purpose is to update and include new additions to the lists of futures exchanges and stock exchanges as set out in Schedule 1 to SFO.

38. Parts 2 and 3 of Schedule 1 to SFO contain lists of local and overseas futures exchanges and stock exchanges which are, respectively, "specified futures exchanges" and "specified stock exchanges". In connection with SFO and its subsidiary legislation, one or both of the lists are referred to in provisions relating to licensing, recognized counterparty status, disclosure of interests and price stabilizing. One or both of the lists are also referred to in other ordinances such as the Inland Revenue Ordinance (Cap. 112) to help serve as one of the parameters defining those financial transactions which may fall outside the profits tax net.

39. L.N. 94 updates the names of certain specified futures exchanges and specified stock exchange to reflect their current positions/names as a number of the exchanges, according to the Administration, have changed their names or otherwise been affected by corporate reorganizations.

40. Further, in order to facilitate the development of Hong Kong as an international finance centre in general and as an asset management centre so as to fulfill the commitments made by the Administration in the 2010-11 Budget to strengthen the competitiveness of the asset management industry in Hong Kong, L.N. 94 adds to the lists the following 7 specified futures exchanges and 2 specified stock exchanges from the emerging markets -

(a) Futures exchanges

- (i) Brazil: BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros;
- (ii) China: China Financial Futures Exchange, Dalian Commodity Exchange, Shanghai Futures Exchange and Zhengzhou Commodity Exchange;
- (iii) India: Multi Commodity Exchange of India Limited and National Commodity & Derivatives Exchange Limited; and

(b) Stock exchanges

India: BSE Limited and National Stock Exchange of India Limited.

41. L.N. 94 will come into operation on 18 July 2012.

42. According to the LegCo Brief dated May 2012 issued by the Financial Services and the Treasury Bureau and SFC (no reference number provided), SFC published a Consultation Paper on Proposed Amendments to Specified Stock and Futures Exchanges on 21 February 2011 in relation to the proposed amendments as set out in paragraphs 39 and 40 above. The Administration reported that all respondents supported the proposals.

43. The Financial Services and the Treasury Bureau and SFC jointly provided the Panel on Financial Affairs with an information note (LC Paper No. CB(1)1703/11-12(01)) in late April 2012 on L.N. 94. The information paper will be included in the Panel's agenda for the meeting on 21 May 2012 for Panel members to note.

Securities and Futures (Amendment) Ordinance 2012 (9 of 2012)
Securities and Futures (Amendment) Ordinance 2012 (Commencement)
Notice (L.N. 95)

44. The Securities and Futures (Amendment) Bill 2011 (the Bill) was passed by the Legislative Council on 25 April 2012 and gazetted as the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) (the Amendment Ordinance) on 4 May 2012.

45. The Amendment Ordinance seeks to amend SFO to require listed corporations to disclose inside information to the public and impose civil sanctions for breach of the requirement, to provide SFC with direct access to the Market Misconduct Tribunal, to strengthen SFC's investor education role and to make miscellaneous minor amendments, and to make consequential amendments to subsidiary legislation under SFO.

46. Under section 1(2) of the Amendment Ordinance, the Amendment Ordinance (except Part 2) comes into operation on the day on which it is published in the Gazette (i.e. 4 May 2012). Section 1(3) provides that Part 2 comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. Part 2 of the Amendment Ordinance implements a statutory disclosure regime for price sensitive information.

47. By L.N. 95 made under section 1(3) of the Amendment Ordinance, the Secretary for Financial Services and the Treasury has appointed 1 January 2013 as the day on which Part 2 of the Amendment Ordinance comes into operation.

48. Before its passage, the Bill has been scrutinized by a Bills Committee. The Bills Committee was informed of the Administration's plan

that Part 2 of the Amendment Ordinance would commence operation on 1 January 2013. The Bills Committee raised no objection. Members may refer to the LegCo Brief dated 9 May 2012 issued by the Financial Services Branch of the Financial Services and the Treasury Bureau (no reference number provided) and the report of the Bills Committee (LC Paper No. CB(1)1366/11-12) for further information.

Concluding remarks

49. The Legal Service Division is still scrutinizing the legal and drafting aspects of L.N. 88 and will make a further report if necessary. No difficulties have been identified in relation to the legal or drafting aspects of the other items.

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