

立法會
Legislative Council

LC Paper No. LS23/12-13

**Paper for the House Committee Meeting
on 8 February 2013**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 1 February 2013**

Date of tabling in LegCo : 6 February 2013

Amendment to be made by : 27 February 2013 (or 27 March 2013 if extended by resolution)

Companies Ordinance (28 of 2012)

Companies (Words and Expressions in Company Names) Order (L.N. 7)

Companies (Disclosure of Company Name and Liability Status) Regulation (L.N. 8)

Companies (Accounting Standards (Prescribed Body)) Regulation (L.N. 9)

Companies (Directors' Report) Regulation (L.N. 10)

Companies (Summary Financial Reports) Regulation (L.N. 11)

Background

The new Companies Ordinance (28 of 2012) (CO) was passed on 12 July 2012. Subsidiary legislation is required to be enacted before CO can be brought into operation. The Administration has identified at least 13 pieces of subsidiary legislation that are required to implement CO. It intends to introduce them in batches. The first batch of five gazetted on 1 February 2013 is reported in the following paragraphs.

Companies (Words and Expressions in Company Names) Order (L.N. 7)

2. L.N. 7 is made by the Financial Secretary (FS) under section 101 of CO to specify words and expressions, which if contained in a company's name, prior approval must be obtained from the Registrar of Companies before registration.

3. According to paragraph 3 of the LegCo Brief issued by the Financial Services and the Treasury Bureau on 30 January 2013 (File Ref.: CBT/7/6C), the list of words and expressions set out in L.N. 7 basically follows

the existing list in the Companies (Specification of Names) Order (Cap.32E) but with the addition of "levy" and "tourism board" (and their Chinese equivalents) and certain words and expressions deleted.

4. L.N. 7 comes into operation on the day on which section 101 of CO comes into operation.

Companies (Disclosure of Company Name and Liability Status) Regulation (L.N. 8)

5. L.N. 8 is made by FS under sections 659 and 660 of CO to provide for requirements concerning the display of a company's name registered under CO, the disclosure of the company's status and the penalty for contravention of the requirements.

6. These requirements include -

- (a) A company's registered name must be displayed continuously in legible characters at its registered office and every office or place which is open to the public and in which the company's business is carried on such that it can be easily seen by any visitor to the location, subject to the prescribed exceptions;
- (b) A company's registered name must be stated in business letters, notices or other official publications of the company, contracts, deeds, bills of exchanges, promissory notes etc. and on its websites; and
- (c) A company must disclose its limited liability status or otherwise in prescribed manner.

The company and every responsible person of the company is liable to a fine at level 3 (i.e. \$10,000) for non-compliance of the requirements.

7. L.N. 8 comes into operation on the day on which sections 659 and 660 of CO come into operation.

Companies (Accounting Standards (Prescribed Body)) Regulation (L.N. 9)

8. L.N. 9 is made by FS under section 452(1) of CO and prescribes the Hong Kong Institute of Certified Public Accountants as the body for the issuance or specification of statements of standard accounting practices which the financial statements of a company must comply with as stipulated under section 380(4)(b) of CO.

9. L.N. 9 comes into operation on the day on which section 452(1) of CO comes into operation.

Companies (Directors' Report) Regulation (L.N. 10)

10. L.N. 10 is made by FS under section 452(3) of CO to provide for information that is required to be contained in the directors' report.

11. Such information includes -

- (a) the directors' interests under certain arrangements entered into by the company or another company in the same corporate group;
- (b) the amount of donations (which is not less than \$10,000) made by the company and its subsidiary undertakings unless exempted;
- (c) shares issued by the company;
- (d) equity-linked agreements entered into by the company that will or may result in the issuing of shares;
- (e) the amount of dividends recommended by the directors to be paid (if any);
- (f) a summary of reasons given by any director who has resigned or declined to stand for re-election because of disagreement with the board of directors unless exempted; and
- (g) a statement that a provision that provides for indemnity against liability incurred by a director to a third party is or was in force as required by section 470 of CO.

12. Under section 388(6) of CO, a director of the company is liable to a fine of \$150,000 for failure, amongst others, to take all reasonable steps to prepare a report that contains the information prescribed by L.N. 10. If such failure is wilful, apart from the fine, the director is also liable to imprisonment of 6 months under section 388(7).

13. L.N. 10 comes into operation on the day on which section 452(3) of CO comes into operation.

Companies (Summary Financial Reports) Regulation (L.N. 11)

14. L.N. 11 is made by FS under section 452(4) and (5) of CO to provide for the forms and contents of a summary financial report of a company as well as the notification to members of the companies for ascertaining their intention to receive summary financial reports.

15. Under L.N. 11, the summary financial report must be derived from the financial statements, the auditor's report on those statements and the directors' report (collectively, the reporting documents) of the company to which it relates and must contain the information and the statements specified in sections 3, 4 and 5. They include information and particulars included in the company's statement of financial position and statement of comprehensive income, information required to be contained in the directors' report and relevant auditor's statements and opinion (e.g. the statement that the financial statements have not been properly prepared, that the financial statements are not consistent with the directors' report, etc.).

16. Under section 439(3) of CO, a director of the company is liable to a fine of \$300,000 for failure to take all reasonable steps to secure compliance of the requirements prescribed by L.N. 11, and if such failure is wilful, apart from the fine, the director is also liable to imprisonment of 12 months.

17. Section 7 specifies that the notification for ascertaining member's intention to receive summary financial reports must contain, amongst others, a general statement about the contents and function of a summary financial report and a statement to the effect that the members may send a notice of intent requesting the company to send them the full reporting documents or, instead, the summary financial report. A notification under section 7 must have attached to it a card or document that may be used for sending the notice of intent. The card or document has to be provided with postage prepaid if it is to be sent to an address in Hong Kong.

18. L.N. 11 comes into operation on the day on which section 452(4) and (5) of CO comes into operation.

19. As advised by the Clerk to the Panel on Financial Affairs, the Panel was consulted on 7 January 2013. A Panel member conveyed the accounting industry's concern about the offence provision on auditor's liability under the Companies (Revision of Financial Statements and Reports) Regulation¹ in respect of omission of the statement of opinion that the revised financial statements are not in disagreement with the accounting records in any material respect. As regards the arrangement for the scrutiny of the 13 pieces of

¹ This piece of subsidiary legislation is not included in this batch.

subsidiary legislation to be made under CO for its implementation, Panel members in general supported the Administration's suggestion that the House Committee might consider setting up one single subcommittee to study the 13 pieces of subsidiary legislation in order to enable the scrutiny work to be conducted in a more efficient and effective manner. Members recommended that the House Committee be invited to consider the Administration's suggestion.

20. Members may wish to refer to the LegCo Brief issued by the Financial Services and the Treasury Bureau on 30 January 2013 (File Ref.: CBT/7/6C) for further information on L.N. 7 to L.N. 11.

21. The Legal Service Division is still scrutinizing the legal and drafting aspects of L.N. 7 to L.N. 11.

**Public Health and Municipal Services Ordinance (Cap. 132)
Designation of Libraries (Amendment) (No. 2) Order 2013 (L.N. 12)**

22. The Director of Leisure and Cultural Services (the Director), as the public officer designated to be the Authority by section 3 of the Public Health and Municipal Services Ordinance (Cap. 132), manages and controls the libraries listed in the Schedule to the Designation of Libraries Order (Cap. 132 sub. leg. O) (the Libraries Order). Under section 105K of Cap. 132, the Director may, by order published in the Gazette, designate any building, or part of a building, as a library.

23. L.N. 12 is made by the Director under section 105K of Cap. 132 to amend the Schedule to the Libraries Order in order to –

- (a) cancel the designation of the ground floor, Wing B, Tak Lok House, Tak Tin Estate, Kowloon as a library;
- (b) cancel the designation of the Students' Study Room on the fifth floor of Lam Tin Complex, 1 Hing Tin Street, Lam Tin, Kwun Tong as a library; and
- (c) designate the fifth and sixth floors of Lam Tin Complex, 1 Hing Tin Street, Lam Tin, Kwun Tong as a library.

24. As explained in the LegCo Brief, when L.N. 12 comes into operation on 30 March 2013, the existing Lam Tin Public Library (para. 2(a)) will be closed and the new library (including Students' Study Room) (para. 2(c)) will be opened for public use.

25. Members may refer to LegCo Brief (with no reference number) issued by the Leisure and Cultural Services Department on 28 January 2013 for further background information.

26. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 12.

27. No difficulties relating to the legal or drafting aspects of L.N. 12 have been identified.

**Securities and Futures Ordinance (Cap. 571)
Securities and Futures (Contracts Limits and Reportable Positions)
(Amendment) Rules 2013 (L.N. 13)**

28. Under section 35(1) of the Securities and Futures Ordinance (Cap. 571) (SFO), the Securities and Futures Commission (SFC) may prescribe limits on the number of futures contracts that may be held or controlled by any person. SFC may also prescribe the reportable positions² in respect of such contracts. Those limits and reportable positions are established and fixed for the futures contracts specified in Schedule 1 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y) (the Rules).

29. L.N. 13, made by SFC under section 35(1) of SFO, amends the Rules by adding the HSI Volatility Index futures contract and the US Dollar vs Renminbi (Hong Kong) futures contract and their respective position limits and reportable positions as items 12 and 13 of its Schedule 1. These two futures contracts were launched by the Hong Kong Exchanges and Clearing Limited in February 2012 and in September 2012 respectively.

30. L.N. 13 will come into operation on 12 April 2013.

31. Members may refer to LegCo Brief (with no reference number) issued by the Securities and Futures Commission on 28 January 2013 for further information.

32. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 13.

² "Reportable position" is defined in section 35(6) of the Securities and Futures Ordinance (Cap. 571) as an open position in futures or options contracts the number or total value of which is in excess of a number or total value specified by rules made under the section.

33. No difficulties relating to the legal and drafting aspects of L.N. 13 have been identified.

**Residential Properties (First-hand Sales) Ordinance (Cap. 621)
Residential Properties (First-hand Sales) Ordinance (Commencement)
Notice (L.N. 14)**

34. The Residential Properties (First-hand Sales) Ordinance (Ord. No. 19 of 2012) (the Ordinance) was passed by the Legislative Council (LegCo) on 29 June 2012, and published in the Gazette on 6 July 2012. The Ordinance seeks to further enhance the transparency and fairness of the sales arrangements of first-hand residential properties and enhance consumer protection.

35. Section 1(2) of the Ordinance provides that the Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Housing (STH) by notice published in the Gazette.

36. By L.N. 14 made under section 1(2) of the Ordinance, STH has appointed –

- (a) 2 April 2013 as the day on which sections 1 to 9 of the Ordinance (short title and commencement, and interpretation clauses), Division 1 of Part 6 of the Ordinance (the appointment and functions of the Authority and related provisions), and Schedule 2 to the Ordinance (interpretation clauses) come into operation; and
- (b) 29 April 2013 as the day on which the remaining provisions of the Ordinance (i.e. provisions other than those mentioned in (a) above) come into operation.

37. According to the Administration, the abovementioned proposed arrangements will enable STH to appoint under section 86 of the Ordinance on or after 2 April 2013 a public officer to be the Authority and other public officers to assist the Authority in the performance of the Authority's functions. The Authority will then issue guidelines under section 88 of the Ordinance a few weeks before 29 April 2013 to ensure vendors of first-hand residential properties and other stakeholders will know in advance how to comply with the requirements of the Ordinance. The Authority will start enforcing the Ordinance on 29 April 2013 when the remaining provisions of the Ordinance come into operation.

38. Members may refer to the LegCo Brief (with no reference number) issued by the Transport and Housing Bureau on 30 January 2013 for further information.

39. As advised by the Clerk to the Panel on Housing, the Panel has not been consulted on L.N. 14. However, the Administration had undertaken to bring the Ordinance and the Sales of First-hand Residential Properties Authority (SRPA) into operation within 12 months after the Ordinance was enacted in June 2012. When the Panel considered the proposed creation of directorate posts for implementation of the Ordinance at its meeting on 3 December 2012, the Panel was informed that the Administration planned to bring the Ordinance and SRPA into operation by end of April 2013. Members did not raise any questions on the proposed date.

40. No difficulties relating to the legal and drafting aspects of L.N. 14 have been identified.

Prepared by

LO Wing-yee, Winnie (L.N. 7 – L.N. 11)

Carrie WONG (L.N. 12 – L.N. 14)

Assistant Legal Advisers

Legislative Council Secretariat

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