

立法會
Legislative Council

LC Paper No. LS27/12-13

**Paper for the House Committee Meeting
on 1 March 2013**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 22 February 2013**

Date of tabling in LegCo : 27 February 2013

Amendment to be made by : 27 March 2013 (or 17 April 2013 if extended by resolution)

Electronic Transactions Ordinance (Cap. 553)

Electronic Transactions (Fees) (Amendment) Regulation 2013 (L.N. 16)

The Electronic Transactions Ordinance (Cap. 553) was enacted in 2000 to establish a Voluntary Certification Authority Recognition Scheme (the Scheme) for organizations to operate as recognized Certification Authorities (CAs) to issue digital certificates (certificates) to authenticate digital signatures used in electronic transactions. Under the Scheme, both the CA and the certificates they issue require recognition by the Government Chief Information Officer. Under section 49(b) of Cap. 553, the Secretary for Commerce and Economic Development (SCED) may make regulations to prescribe the fees payable in respect of applications for the recognition of CAs, the recognition of certificates or the renewal of such recognition. The Electronic Transactions (Fees) Regulation (Cap. 553 sub. leg. A) is made by SCED to provide for these fees.

2. The current fees payable under Cap. 553A have been in force since 2000. L.N. 16 is made by SCED to increase these fees by about 27% in accordance with the "user pays" principle as follows -

<i>Type of application</i>	<i>Existing fee</i>	<i>Revised fee</i>
1. Application for recognition as a recognized certification authority	\$15,000	\$28,450

<i>Type of application</i>	<i>Existing fee</i>	<i>Revised fee</i>
2. Application for renewal of recognition as a recognized certification authority	\$15,000	\$28,450
3. Application for recognition of a particular certificate or a particular type, class or description of certificates if made simultaneously with item 1 or 2 above	\$1,500	\$2,850
4. Application for recognition of a particular certificate or a particular type, class or description of certificates if not made simultaneously with item 1 or 2 above	\$3,400	\$6,460

3. Members may refer to the LegCo Brief (File Ref: GCIO/A 107/18(03)) issued by the Commerce and Economic Development Bureau in February 2013 for background information. As advised by the Clerk to the Panel on Information Technology and Broadcasting, at the meeting of the Panel on 10 December 2012, the Administration briefed members on its proposal to revise the fees for recognition of CAs and certificates issued by the CAs under Cap. 553A. The Panel supported in principle the Administration's proposed fee adjustments.

4. L.N. 16 will come into operation on 1 May 2013.

Smoking (Public Health) Ordinance (Cap. 371)

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2013 (L.N. 17)

5. Under section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371), the Director of Health (DH) may, by notice published in the Gazette, designate as a no smoking area (NSA) the whole or a part of -

- (a) any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

6. Each of these termini and bus terminus is referred to as a "public transport facility" in the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371 sub. leg. D) (the Designation Notice). The designated NSAs in public transport facilities are set out in the Schedule to the Designation Notice.

7. Under section 7(1) of Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in an NSA commits an offence and is liable on summary conviction to a fine of \$5,000. Smoking in an NSA is also a scheduled offence in respect of which a public officer may give the offender a notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) offering him an opportunity to discharge his liability to conviction for the offence by payment of a fixed penalty (currently fixed at \$1,500) within 21 days from the date of the notice.

8. L.N. 17 made by DH amends the Schedule to the Designation Notice to designate a new NSA in a new public transport facility, amend by substitution the designation of the existing designated NSAs in 10 public transport facilities and repeal the designation of NSAs in three public transport facilities. The actual boundaries of the new and amended NSAs are delineated on respective plans signed by DH and deposited in the Land Registry. They are also published in the Gazette by General Notice (G.N. 962) on 22 February 2013.

9. Members may refer to the LegCo Brief (File Ref: FH CR 52/581/89) issued by the Food and Health Bureau in February 2013 for background information. According to paragraph 13 of the LegCo Brief, an information note on the details of the proposed amendments together with relevant plans of the public transport facilities has been issued to 18 District Councils for their information and the plans of the NSAs of public transport facilities will be posted on the website of the Tobacco Control Office for public information before the new designation takes effect.

10. The Panel on Health Services has not been consulted on L.N. 17.

11. L.N. 17 will come into operation on 1 June 2013.

12. No difficulties have been identified in the legal and drafting aspects of L.N. 16 and L.N. 17.

Import and Export Ordinance (Cap. 60)
Import and Export (General) Regulations (Cap. 60 sub. leg. A)
Import and Export (General) (Amendment) Regulation 2013 (L.N. 25)

13. L.N. 25 is made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60) (IEO) to amend the Import and Export (General) Regulations (Cap. 60 sub. leg. A) (the IE Regulations) so as to prohibit the export of powdered formula to all places outside Hong Kong, except under an export licence or an exemption.

14. Section 6D(1) of IEO provides that, subject to the IE Regulations, no person shall export any article specified in the second column of Schedule 2 to the IE Regulations to the country or place specified opposite thereto in the third column of that Schedule except under and in accordance with an export licence issued by the Director-General of Trade and Industry (DGTI) under section 3 of IEO.

15. Under section 6D(3) of IEO, any person who contravenes section 6D(1) of IEO in respect of any article specified in the second column of Part 1 of Schedule 2 to the IE Regulations is guilty of an offence and is liable on conviction to a fine of HK\$500,000 and to imprisonment for 2 years.

16. It is also an offence under section 10 of IEO if the owner of a vessel, aircraft or vehicle accepts any prohibited article for export on the vessel, aircraft or vehicle in contravention of the relevant requirements. Such offence carries a fine of HK\$500,000 and an imprisonment for 1 year. It shall be a defence to a charge of this offence if the defendant proves that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.

17. Part 1 of Schedule 2 to the IE Regulations currently contains 9 items of articles. These include textiles, pesticides, and pharmaceutical products and medicines as defined by section 2 of the Pharmacy and Poisons Ordinance (Cap. 138).

18. The Administration considers that the recent supply chain failure in relation to powdered formula is closely related to parallel trading activities. On 1 February 2013, the Administration announced a series of measures to combat parallel trading activities. According to paragraph 6 of the LegCo Brief (File Ref: FH CR1/3231/13) dated 22 February 2013 issued by the Food and Health Bureau, these measures have helped stabilize the supply of powdered formula in Hong Kong shortly before the Chinese New Year.

19. As the Administration takes the view that the problem of parallel traders diverting large quantities of powdered formula away from the supply chain in Hong Kong is likely to re-emerge at least in the short to medium term, L.N. 25 is made to amend the IE Regulations by adding powdered formula as a specified article in the second column of Part 1 of Schedule 2 so that an export licence must be obtained from DGTI in order to export powdered formula or unless otherwise allowed in IEO/the IE Regulations.

20. L.N. 25 adds a definition of powdered formula to the IE Regulations to mean a substance in powder form that is or appears to be for consumption by a person aged under 36 months and is or appears to be milk or milk-like substance in powder form to satisfy wholly or partly the nutritional requirement of a person aged under 36 months.

21. In order to allow a reasonable quantity for personal use, L.N. 25 provides that the prohibition does not apply to powdered formula not exceeding 1.8 kg in total net weight that is exported in the accompanied personal baggage of a person leaving Hong Kong. Nevertheless, such person must be aged 16 or above who has not left Hong Kong in the last 24 hours.

22. L.N. 25 further makes provisions to cater for the need of a person aged under 36 months (the child) leaving Hong Kong together with a person aged 16 or above who has left Hong Kong one or more times in the last 24 hours. The prohibition does not apply to powdered formula, not exceeding a reasonable quantity for the child's consumption during the travelling time from a point of exit in Hong Kong to the next point of entry in a place outside Hong Kong, that is exported in the accompanied personal baggage of such a person. The powdered formula, however, must be in an unsealed container¹.

23. L.N. 25 will come into operation on 1 March 2013.

24. Members may refer to the LegCo Brief for further information in relation to the legislative amendments on the prohibition of the export of powdered formula from Hong Kong, including the Administration's proposal on the issue of export licences for powdered formula by DGTI as mentioned in paragraphs 10 and 11.

¹ There are currently other exemptions provided under IEO/the IE Regulations that an export licence is not required for the export of certain articles which will also apply to the export of powdered formula. For example, a carrier, courier or freight forwarder does not need to obtain an export licence in respect of a consignment of powdered formula in transit or as air transshipment cargo, provided that the consignment of powdered formula satisfies the relevant requirements. Members may refer to paragraphs 12 and 13 of the LegCo Brief for further information in relation to these exemption arrangements.

25. The Administration conducted a public consultation in relation to the proposed legislative amendments from 7 February 2013 to 18 February 2013. On 7 February 2013, it held a trade consultation session. According to paragraph 27 of the LegCo Brief, the public supports the proposal in general but some retailers have argued that the proposal would not be consistent with the free market principle.

26. The Administration has received 35 submissions from individuals and 15 submissions from organizations at the close of the public consultation. According to paragraph 28 of the LegCo Brief, about half of the submissions from individuals are supportive of the legislative proposal, whereas some individuals as well as parents with children living in the Mainland object to the proposal. Regarding the submissions from organizations, the Hong Kong General Chamber of Pharmacy Limited proposes to postpone the enactment of L.N. 25. The Hong Kong Retail Management Association has reservation on the proposal on the ground that it is not consistent with the free trade policy. Two major powdered formula suppliers object to the proposal while another has reservation. The Consumer Council supports the proposal as the supply of powdered formula will be stabilized.

27. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Administration briefed the Panel at its meeting on 4 February 2013 on a basket of measures including a proposal to amend the IE Regulations to stabilize supply of formula products for infants and young children in Hong Kong. At the meeting, some members expressed objection to the legislative proposal on the ground that it was not consistent with the free market principle. They also questioned the need to combat parallel trading activities as parallel trading activities per se was not an offence. Expressing concern about the enforcement efforts to be taken by the Customs and Excise Department in examining passengers and goods at the boundary control points, some members also queried whether the legislative proposal could be implemented successfully.

28. The Legal Service Division will seek clarification from the Administration regarding the drafting of L.N. 25 and will make a further report if necessary.

Prepared by

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