

立法會
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**Paper for the House Committee Meeting
on 12 April 2013**

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

Date of tabling in LegCo : 27 March 2013

Amendment to be made by : 24 April 2013 (or 15 May 2013 if extended by resolution)

**PART I REGULATIONS MADE UNDER COMPANIES ORDINANCE
(28 of 2012)**

Companies Ordinance (28 of 2012)

**Companies (Revision of Financial Statements and Reports) Regulation
(L.N. 34)**

**Companies (Disclosure of Information about Benefits of Directors) Regulation
(L.N. 35)**

Background

The new Companies Ordinance (28 of 2012) (the new CO) was passed on 12 July 2012. Subsidiary legislation is required to be enacted before the new CO can be brought into operation. The Administration has identified at least 13 pieces of subsidiary legislation that are required to implement the new CO. The first batch was gazetted on 1 February 2013. The second batch which was gazetted on 22 March 2013 is reported in the following paragraphs. Members may wish to note that subsidiary legislation relating to the new arrangement for inspection of the Companies Register under the new CO is not included in this batch.

Companies (Revision of Financial Statements and Reports) Regulation (L.N. 34)

2. Under section 449 of the new CO, the directors of a company may cause the financial statements of the company to be revised and make necessary consequential revisions to the summary financial report or directors' report concerned (hereinafter referred as "relevant documents"). Section 450 of the new CO provides for the making of subsidiary legislation to provide for the application of the new CO

in relation to the revised relevant documents, and to provide for the requirements in relation to the revised relevant documents. L.N. 34 is made by the Financial Secretary under section 450 of the new CO for the above-mentioned purposes.

3. According to paragraph 4 of the LegCo Brief, L.N. 34 basically re-enacts the existing Companies (Revision of Accounts and Reports) Regulation (Cap. 32 sub. leg. N), with necessary modifications to align with the provisions on accounts and audit in Part 9 of the new CO. In summary, the changes include –

- (a) alignment of terms, namely replacing "accounts" by "financial statements" and "balance sheet" by "statement of financial position";
- (b) alignment of requirements prescribed in respect of the signing and distribution of the revised relevant documents with those under the new CO;
- (c) alignment of provisions on the auditor's report on revised financial statements and auditors' rights and privileges with the relevant provisions under the new CO, including sections 407 and 408 of the new CO; and
- (d) alignment of offences and penalties with those in the new CO in respect of the original relevant documents.

4. L.N. 34 will come into operation on the day on which section 450 of the new CO comes into operation.

5. Members may wish to pay particular attention to section 16 (offences relating to contents of auditor's report on revised financial statements) of L.N. 34, which is the mirror provision of section 408 of the new CO (which was clause 399 of the Companies Bill). The Administration has previously stated in a paper numbered CB(1)2287/11-12(02) that the original clause 399 (which is now section 408 of the new CO) does not fully reflect the legislative intent and may give rise to implementation problem. Members may wish to know whether the Administration intends to amend section 408 of the new CO and section 16 of L.N. 34 before they come into operation. The Legal Service Division is seeking clarification from the Administration in this regard.

6. According to paragraph 16 of the LegCo Brief, during phase two of the public consultation conducted in November 2012, some respondents from the accounting sector who previously expressed concerns over certain aspects of section 408 of the new CO during scrutiny of the Companies Bill by the Bills Committee in the last LegCo term have repeated their previous views while commenting on the mirror provision of that section. They generally welcomed the fact that the Administration had continued to engage with the Hong Kong Institute of Certified

Public Accountants (HKICPA) on section 408 of the new CO. In this regard, the Administration has initiated discussion with the HKICPA on the preparatory work for the implementation of section 408 when the new CO is brought into operation, tentatively scheduled for the first quarter of 2014. In parallel, the Administration is also exploring with the HKICPA as to whether and how the wording of the provision could be improved in the future in the light of market feedback and practical operating experience.

Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. 35)

7. Section 383 of the new CO provides that the financial statements of a company for a financial year must contain, in the notes to the statements, the information concerning directors' emoluments etc. as prescribed by subsidiary legislation. Sections 451 and 452(2) of the new CO provide for the making of subsidiary legislation for such purpose. L.N. 35, made by the Financial Secretary under those sections of the new CO, sets out the detailed disclosure requirements on the following aspects –

- (a) directors' emoluments;
- (b) directors' retirement benefits;
- (c) payments made or benefits provided in respect of the termination of the service of directors;
- (d) loans, quasi-loans and credit transactions as well as guarantees entered into and security provided in connection with such dealings in favour of directors;
- (e) material interests of directors in transactions, arrangements or contracts which are significant to the company's business; and
- (f) consideration provided to or receivable by third parties for making available the services of a person as director.

8. According to paragraph 7 of the LegCo Brief, the existing Companies Ordinance (Cap. 32) (namely sections 161, 161B and 129D(3)(j)) also imposes similar requirements. L.N. 35 mainly restates and consolidates the disclosure requirements, with necessary modifications for alignment with the relevant provisions on fair dealings by directors under Part 11 of the new CO and to improve the disclosure regime.

9. L.N. 35 will come into operation on the day on which sections 451 and 452(2) of the new CO come into operation.

10. The Clerk to the Panel on Financial Affairs has advised that 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 in respect of omission of information in the audit report in relation to the revised financial statements in the Companies (Revision of Financial Statements and Reports) Regulation.

11. At the House Committee meeting held on 8 February 2013, members agreed to form a single subcommittee to study the 13 pieces of subsidiary legislation to be made under the new CO. At the House Committee meeting held on 15 March 2013, members noted that the Administration would table the second batch of two pieces of subsidiary legislation before Legislative Council on 27 March 2013. The Subcommittee would meet on 9 April 2013 to start the scrutiny of these two pieces of subsidiary legislation.

12. Members may wish to refer to the LegCo Brief issued by the Financial Services and the Treasury Bureau on 20 March 2013 (File Ref. : CBT/7/6C) for further information on L.N. 34 and L.N. 35.

PART II FEES INCREASE

Entertainment Special Effects Ordinance (Cap. 560)

Entertainment Special Effects (Fees) (Amendment) Regulation 2013 (L.N. 36)

13. L.N. 36 amends the Schedule to the Entertainment Special Effects (Fees) Regulation (Cap. 560 sub. leg. B) (the principal Regulation) to increase the fees payable in respect of the issue, renewal, certification, replacement or alteration of various licences or permits, or in respect of the assessment required for the issue or alteration of various licences under the Entertainment Special Effects Ordinance (Cap. 560) or the Entertainment Special Effects (General) Regulation (Cap. 560 sub. leg. A). The increases range from 5.5% to 8.3%.

14. Members may refer to the LegCo Brief (with no reference number) dated 20 March 2013 issued by Create Hong Kong, Communications and Technology Branch, Commerce and Economic Development Bureau for background information.

15. According to the LegCo Brief, the fees increase is aimed to recover the full cost at 2013-14 prices of providing the services. The existing fees prescribed in the principal Regulation have been in effect since June 2005 (L.N. 46 of 2005). The existing and new fees are set out at Annex B to the LegCo Brief.

16. In response to our enquiry, the Administration has replied that in view of the insignificant fee adjustment in dollar terms and little impact of the fee adjustment on business and operating costs of the film and entertainment sectors concerned, it has not carried out formal consultation on the proposed fee revision.

17. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Administration briefed members at its meeting on 14 January 2013 on its proposal to increase the fees prescribed in the principal Regulation. The Panel supported in principle the proposal.

18. L.N. 36 will come into operation on 29 May 2013.

PART III LIBRARIES AND CIVIC CENTRE

Public Health and Municipal Services Ordinance (Cap. 132)

Designation of Libraries (Amendment) (No. 3) Order 2013 (L.N. 37)

Public Health and Municipal Services Ordinance (Civic Centres) (Amendment of Thirteenth Schedule) Order 2013 (L.N. 38)

Designation of Libraries (Amendment) (No. 3) Order 2013 (L.N. 37)

19. L.N. 37 amends the Schedule to the Designation of Libraries Order (Cap. 132 sub. leg. O) (the principal Order) to-

- (a) cancel the designation of Shop No. 702, 7/F., Tsz Wan Shan Shopping Centre, Kowloon as a library; and
- (b) designate Shop Nos. 701-702, 7/F., Tsz Wan Shan Shopping Centre, 23 Yuk Wah Street, Wong Tai Sin, Kowloon as a library.

20. The legal effect of L.N 37 is to empower the Director of Leisure and Cultural Services (the Director) to manage and control the designated part of the building as a library under the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) (see paragraph 19(b) above).

21. Members may refer to the LegCo Brief (with no reference number) dated 15 March 2013 issued by Leisure and Cultural Services Department for background information.

22. As advised by the Clerk to the Panel on Home Affairs (HA Panel), the Panel has not been consulted on the proposal.

23. L.N. 37 will come into operation on 16 May 2013.

Public Health and Municipal Services Ordinance (Civic Centres) (Amendment of Thirteenth Schedule) Order 2013 (L.N. 38)

24. L.N. 38 sets aside "The site and buildings known as the Oil Street Art Space at 12 Oil Street, North Point" for use as a civic centre, and the Thirteenth Schedule to the Ordinance is amended accordingly to add the new civic centre to the list of civic centres set out in the Schedule.

25. The legal effect of L.N. 38 is to empower the Director to manage and control the set aside site and buildings for use as a civic centre under the Ordinance.

26. Members may refer to the LegCo Brief (with no reference number) dated 19 March 2013 issued by Leisure and Cultural Services Department for background information.

27. According to the LegCo Brief, the Administration has consulted the Eastern District Council and the Art Museum Advisory Panel, and both supported the proposal.

28. As advised by the Clerk to HA Panel, the Panel has not been consulted on the proposal.

29. L.N. 38 will come into operation on 20 May 2013.

PART IV MISCELLANEOUS ITEMS

Trade Descriptions Ordinance (Cap. 362)

Trade Descriptions Ordinance (Amendment of Schedule 1) Notice 2013 (L.N. 39)

30. L.N. 39 amends Schedule 1 to the Trade Descriptions Ordinance (Cap. 362) (the Ordinance) to add the Free Trade Agreement between Hong Kong, China and Chile signed on 7 September 2012 (the Agreement) to the list of scheduled trade arrangements so that, by virtue of section 2A(3) of the Ordinance, the rules of origin for any goods qualified for preferential tariff treatment under the Agreement apply for the purpose of determining the place of manufacture or production of the goods.

31. Members may refer to the LegCo Brief (File Ref: TRA CR 1327/1/14) dated 22 March 2013 issued by Trade and Industry Department for background information.

32. As advised by the Clerk to the Panel on Economic Development (the Panel), L.N. 39 has not been discussed by the Panel.

33. L.N. 39 will come into operation on 16 May 2013.

Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) Notice (Cap. 374 sub. leg. U)

Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) (Amendment) Notice 2013 (L.N. 40)

34. The Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) Notice (Cap. 374 sub. leg. U) (the principal Notice) sets out in Schedule 1 prohibited zones in the Hong Kong International Airport (the Airport) in which the driving of specified motor vehicles is prohibited. Part 1 of Schedule 2 to the principal Notice sets out restricted zones in the Airport in which drivers of specified motor vehicles are prohibited from picking up or setting down passengers or loading or unloading goods.

35. L.N. 40 is made by the Airport Authority with the approval of the Commissioner for Transport under regulation 14(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G), as modified by section 1 of Part V of Schedule 2 to the Airport Authority Bylaw (Cap. 483 sub. leg. A).

36. L.N. 40 amends-

- (a) Schedule 1 to the principal Notice to designate certain areas as prohibited zones, vary the designation in respect of certain areas and remove an area from the list of prohibited zones (section 3); and
- (b) Part 1 of Schedule 2 to the principal Notice to designate certain areas in the Airport as restricted zones, vary the designation in respect of certain areas as restricted zones, amend the designation in respect of certain areas to remove certain road sections (which have been resumed by the Government for the works of Hong Kong – Zhuhai – Macao Bridge – Hong Kong Link Road, and separately designated as restricted zones by notice published in the Gazette on 20 July 2012 as G.N. 4936 of 2012) from being restricted zones and remove an area from the list of restricted zones (section 4).

37. No LegCo Brief has been issued at the time of writing this Report.

38. In response to our enquiry, the Administration has replied that L.N. 40 seeks to update the prohibited and restricted zones at the Hong Kong International Airport to ensure smooth traffic management within the airport area. The amendments take into account the recent developments of new roads within the airport and the operational needs of the airport. These amendments should not

cause any adverse impact on vehicle parking, passenger pick-up or drop-off, and loading or unloading of goods. The Administration has further stated in its reply that given the operational and technical nature of the proposed amendments, it considers that public consultation would not be necessary for this exercise.

39. As advised by the Clerk to the Panel on Transport, the Panel has not been consulted on L.N. 40.

40. L.N. 40 will come into operation on 15 May 2013.

Concluding Observations

41. The Legal Service Division is still scrutinizing the legal and drafting aspects of L.N. 34 and L.N. 35.

42. No difficulties have been identified in the legal and drafting aspects of L.N. 36 to L.N. 40.

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