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**Paper for the House Committee Meeting
on 6 February 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 January 2015**

Tabling in LegCo : Council meeting of 4 February 2015

Amendment to be made by : Council meeting of 25 February 2015 (or that of 25 March 2015 if extended by resolution)

PART I PERIOD OF LIQUOR LICENCE AND LICENCE FEES

Dutiable Commodities (Liquor) (Amendment) Regulation 2015 (L.N. 20)

Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015 (L.N. 21)

L.N. 20 is made by the Chief Executive in Council under section 6 of the Dutiable Commodities Ordinance (Cap. 109) to amend the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) to -

- (a) extend the maximum validity period of a liquor licence from 1 year to 2 years;
- (b) provide that the maximum period (or the aggregate of the periods) for which a person may be authorised to manage the licensed premises during the illness or temporary absence of the licensee be capped at 25% of the licence duration, and for licences that bear a duration exceeding one year, each period of absence must not exceed 90 days (and the total period of absence must not exceed 90 days within any 12 consecutive months during the licence duration); and

- (c) provide that the requirement for a signature in an application submitted in the form of electronic records can be satisfied by a digital signature, or a password assigned or approved by the Liquor Licensing Board (the Board).

2. According to paragraph 9 of the LegCo Brief (File ref.: FH CR 2/3231/13) issued by Food and Health Bureau and Food and Environmental Hygiene Department in January 2015, the extension of the maximum validity period of a liquor licence would have greater flexibility in granting liquor licences of a longer duration in meritorious cases, and by reducing the Board's workload that would otherwise arise from the processing of straight-forward licence renewal cases, it allows the Board to focus their attention on handling new applications and contested licence renewal applications. Further, according to paragraph 11 of the LegCo Brief, the Administration is formulating, in consultation with the Board, a mid-term review mechanism for licences of a two-year validity period to address the concerns of some District Council members that there is a possibility of deterioration in performance on the part of those licensed premises having granted a 24-month licence.

3. L.N. 21 is made by the Secretary for Food and Health under section 6A of Cap. 109 to amend the Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109 sub. leg. H) to primarily provide for the fees payable when the validity period of liquor licences exceeds one year. Such amendment is consequent upon the extension of the maximum validity period of a liquor licence in L.N. 20.

4. According to paragraph 13 of the LegCo Brief, the fee for a licence that is valid for a period of two years or any period more than one year but less than two years is set at a level which is 1.5 times higher than the fee prescribed for a one-year licence. The fee payable for licences granted for any period less than one year remains unchanged, i.e. such proportion of the prescribed fee as the period for which such licence will be valid bears to a period of 12 months.

5. Both L.N. 20 and L.N. 21 come into operation on 3 August 2015.

6. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel was consulted at its meetings on 10 January 2012 and 8 April 2014 on the Administration's legislative proposals to amend Cap. 109B to, among others, extend the maximum duration of liquor licences to a period of two years. While some members were supportive of the proposed amendments, some other members expressed concern about the

proposal to lengthen the maximum duration of liquor licences. These members considered that a clear and stringent mechanism should be put in place to monitor the liquor-licensed premises' continuous compliance with the licensing conditions. Concerns were also raised about the consultation process for liquor licence applications and the regulation of upstairs bars.

7. Members may refer to the LegCo Brief (File ref.: FH CR 2/3231/13) issued by Food and Health Bureau and Food and Environmental Hygiene Department in January 2015 for background and further information.

PART II REVISION OF FEES

Dutiable Commodities (Amendment) Regulation 2015 (L.N. 22)

8. L.N. 22 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 6 of the Dutiable Commodities Ordinance (Cap. 109) to amend the Schedule to the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) to increase 17 items of fees and charges (fee items).

9. According to paragraphs 4 and 5 of the LegCo Brief (File ref.: TsyB R 00/625-2/1/0 (C)) issued by the Financial Services and the Treasury Bureau on 28 January 2015, 16 of the fee items were last revised in 2010 and the remaining one in 1974. The full cost of providing these services has yet to be recovered. Costing review at the 2014-15 price level shows that the cost recovery levels of the fee items range from 25% to 86% which include licence fees for traders of dutiable commodities (ten items), charges for various certificates and fees for storage of dutiable commodities (three items) and bonded warehouse supervision charges (four items). With a view to revise the fee items by phases so that their cost recovery ratios (currently ranging from 25% to 86%) can improve gradually, the extent of fee increases effected under L.N. 22 ranges from 10% to 20% (in dollar terms, from \$0.3 to \$2,200).

10. L.N. 22 comes into operation on 27 March 2015.

11. As advised by the Clerk to the Panel on Financial Affairs, the Panel was consulted on the proposal to revise the fees items specified in Cap. 109A at the meeting on 5 January 2015. Members did not object to the proposal. Some members urged the Administration to work out a timetable for conducting

systematic fees reviews at regular intervals with a view to achieving full cost recovery in the provision of public services.

12. Members may refer to the LegCo Brief (File ref.: TsyB R 00/625-2/1/0 (C)) issued by the Financial Services and the Treasury Bureau on 28 January 2015 for further information.

Land Survey (Fees) (Amendment) Regulation 2015

(L.N. 23)

13. L.N. 23 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) 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	63	69
1(b)	Inspection of land boundary record for each survey record plan included in the record	63	69
2(a)	Supply of each copy of land boundary plan	87	96
2(b)	Supply of each copy of survey record plan	87	96
3	Deposit of land boundary plan and corresponding survey record plan with the Land Survey Authority	2,980	3,280
4	Registration as an authorized land surveyor	4,840	5,320
5	Renewal of registration as an authorized land surveyor	845	930

14. The fees payable under Cap. 473A were first introduced in 1995 and last revised in 2012. According to the LegCo Brief issued by the

Development Bureau in January 2015 (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 for ascertaining the 2014-15 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.

15. L.N. 23 comes into operation on 27 March 2015.

16. As advised by the Clerk to the Panel on Development, at the Panel meeting of on 5 January 2015, the Administration briefed the Panel on the proposed revision of fees payable for the services under L.N. 23. Members did not raise any objections to the revision of the fees. Some members opined that, to reduce operational costs and enhance service efficiency, the Administration should step up the electronization of the relevant services.

Registration of Copyright Licensing Bodies (Amendment)

Regulation 2015

(L.N. 24)

Trade Marks (Amendment) Rules 2015

(L.N. 25)

Registered Designs (Amendment) Rules 2015

(L.N. 26)

17. L.N. 24 is made by the Secretary for Commerce and Economic Development under section 152 of the Copyright Ordinance (Cap. 528) and by virtue of section 28(1)(c) of the Interpretation and General Clauses Ordinance (Cap. 1) to amend the Schedule to the Copyright Licensing Bodies Regulation (Cap. 528 sub. leg. A) to increase the fees for application for registration and renewal of registration by a licensing body¹.

18. According to paragraph 6 of the LegCo Brief (no reference number provided) issued by the Commerce and Economic Development Bureau in January 2015, the application fee and renewal fee are to be increased by 12% and 58% (in dollar terms, \$235 and \$550) respectively to recover the full cost of providing the services.

¹ "licensing body" (特許機構) is defined in section 145(4) of Cap. 528 to mean a society or other organization, whether registered under section 149 or not, which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

19. L.N. 25 is made by the Registrar of Trade Marks under section 91 of the Trade Marks Ordinance (Cap. 559) with the consent of the Financial Secretary and by virtue of section 28(1)(c) of the Interpretation and General Clauses Ordinance (Cap. 1) to, among others, amend the Schedule to the Trade Marks Rules (Cap. 559 sub. Leg. A) to add a new item of fee and revise certain fees.

20. Under L.N. 25, 9 items of fees for application for registration of certain trade mark and for certain requests such as for search of records and Registrar of Trade Marks' preliminary advice are to be increased by about 53% to 100% (in dollar terms, \$200 to \$800); 5 items of fees for renewal of certain trade mark registration are to be reduced by about 11% (in dollar terms, \$160 to \$300); 1 new item of fee for simultaneous requests for search of records and for Registrar of Trade Marks' preliminary advice in respect of the same additional class of goods or services is added.

21. According to paragraphs 11 and 12 of the LegCo Brief, the increase is to achieve global full cost recovery for the Trade Marks Registry, taking into account the increase in the costs in providing the services. Upon enquiry, the Administration indicated that the "global full cost recovery" policy is different from the usual "full cost recovery" policy in that the full cost recovery is determined on a global basis for the relevant registries including the Trade Marks Registry and Designs Registry instead of on the basis of each particular service provided by these registries² (paragraph 7 of the LegCo Brief). The reduction of renewal fees has taken into account that the Administration has been able to provide the renewal services at a lower cost through automation and streamlining operational procedures. Renewal fees will remain to be charged above the cost recovery level and a major source of income for the Trade Marks Registry. Further, the current fee for provision of a service of preliminary advice and/or search of records on the Register of Trade Marks is the same irrespective of the number of classes of goods/services requested. In order to better reflect the actual cost of providing the relevant services, and to address the possible abuse that some applicants requested advice on a large number of classes at the flat fee of \$200, draining IPD's stringent manpower resources, 2 items of fees (which are included in the 9 items mentioned in paragraph 21 above) are to be increased by 100% (in dollar terms, \$200) as well

² Section 91(6) of Cap. 559 and section 79(6) of Cap.522 provide that any rules made under these Ordinances "may prescribe fees fixed at or provide for fees to be fixed at levels that provide for the recovery of expenditure incurred or likely to be incurred by the Government or other authority in the exercise of any or all functions under this Ordinance, and shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the exercise of any particular function".

as to add a new fee item to be charged for each additional class of goods/services covered by the preliminary advice/search.

22. L.N. 26 was made by the Registrar of Designs under section 79 of the Registered Designs Ordinance (Cap. 522) with the consent of the Financial Secretary and by virtue of section 28 (1)(c) of the Interpretation and General Clauses Ordinance (Cap. 1) to amend the Schedule to the Registered Designs Rules (Cap. 522 sub. leg. A) to reduce certain renewal fees.

23. Under L.N. 26, 4 items of fees relating to the renewal of certain period of registration are to be reduced by about 35% to 36% (in dollar terms, \$440 to \$1,480).

24. According to paragraph 14 of the LegCo Brief, similar to the case of trade mark renewals, the fees are to be reduced because the Administration has been able to cut down on their costs in providing renewal services for designs through automation and with streamlining of procedures. With the reduction, the overall cost recovery rate for the Designs Registry will be brought down to 100%.

25. L.N. 24, L.N. 25 and L.N. 26 come into operation on 30 March 2015.

26. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has been consulted on the fee revision proposals at its meeting on 16 December 2014. Members generally support the proposed fee revision and have no objection to adopting the "user pays" principle to recover the full cost for various trade mark and design related services provided by the Intellectual Property Department. The Law Society of Hong Kong (Law Society) has subsequently made a submission to the Panel on 23 January 2015 expressing objection to the rate of increase in trade mark application fees and the reduction of renewal fees for trade marks and registered designs proposed by the Administration. The Hong Kong Group of the Asian Patent Attorneys Association and the Hong Kong Institute of Trade Mark Practitioners have also written to the Panel on 27 and 30 January 2015 respectively indicating support for the views expressed by the Law Society. The three submissions (LC Paper Nos. CB(1)488/14-15(01), CB(1)499/14-15(01) and CB(1)510/14-15 (01)), and the Administration's written response (LC Paper No. CB(1)522/14-15(01)) have been issued to Panel members and all other Members of the Legislative Council for information.

PART III OTHER SUBSIDIARY LEGISLATION

Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2015

(L.N. 27)

27. L.N. 27 was made by the Director-General of Trade and Industry (DGTI) under section 6B of the Import and Export Ordinance (Cap. 60) to amend Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60, sub. leg. G). Schedule 1 to Cap. 60G specifies the articles of strategic commodities under control, including munitions and commodities which can be used for both industrial and military purposes (dual-use commodities). A person shall not import and export any article specified in Schedule 1 except under and in accordance with an import or export licence issued by DGTI.

28. L.N. 27 amends Schedule 1 to Cap. 60G to reflect the latest changes in the control lists of strategic commodities adopted by Wassenaar Arrangement³. According to paragraph 5 of the LegCo Brief issued by the Trade and Industry Department on 28 January 2015 (File Ref. : TRA CR 1506/2), those changes generally reflect the on-going relaxation of control on strategic commodities which are mainly used for industrial purposes but which can also be applied to military uses, while imposing control on more sensitive items. L.N. 27 also makes certain textual amendments concerning the description of some items as set out in Schedule 1 for the sake of consistency and clarity.

29. L.N. 27 will come into operation on a day to be appointed by the DGTI by notice published in the Gazette. According to paragraph 8 of the LegCo Brief, to enable the trade to benefit from the relaxation of control at the earliest opportunity, the Administration plans to bring the L.N. 27 into effect on 20 April 2015 upon gazettal of a commencement notice on 17 April 2015.

30. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 27.

³ As advised by the Administration, the Wassenaar Arrangement (WA) was formally set up in 1996. It is the successor regime to the Co-ordinating Committee for Multilateral Export Control, which was dissolved in 1994. The WA has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies. At present, the WA has 41 members (whose membership is confined to sovereign states only) including Australia, Germany, Japan, Korea, New Zealand, the UK and the US. Members of the WA would formulate guidelines and best practices including the control list for dual-use items. Members of the WA are guided by these guidelines and best practices in administering their respective export control systems.

Port Control (Public Cargo Working Area) Order 2015

(L.N. 28)

31. Section 3(1) of the Port Control (Cargo Working Areas) Ordinance (Cap. 81) empowers the Secretary for Transport and Housing (STH) to declare by an order any area of unleased Government land and any area of water adjoining any such area to be a public cargo working area (PCWA). Pursuant to section 46 of the Interpretation and General Clauses Ordinance (Cap. 1), STH has the power to repeal any order made.

32. L.N. 28 declares the new boundaries for the Western District PCWA (having an area of approximately 40,300 square metres) which are defined by reference to the plan at Annex 3 of the LegCo Brief issued by the Transport and Housing Bureau and the Marine Department on 23 January 2015 (no reference number provided) (the new section 7B of the Port Control (Public Cargo Working Area) (Consolidation) Order (Cap. 81 sub. leg. B)), and repeals L.N. 58 of 1998 (i.e. The Port Control (Public Cargo Working Area) (No.5) Order 1998 relating to that public cargo working area) and section 7 of Cap. 81B⁴.

33. L.N. 28 will come into operation on a day to be appointed by STH by notice published in the Gazette.

34. According to paragraphs 3 to 5 of the LegCo Brief, the Central & Western District Council is implementing an initiative, the Harbourfront Enhancement and Revitalisation at the Western Wholesale Food Market (WWFM), under the Signature Project Scheme (SPS), with a view to providing a waterfront promenade and open space at WWFM and its vicinity for public enjoyment. The proposed site of the SPS at WWFM sits next to the Western District PCWA. In order to provide an access point to the future waterfront open space at WWFM, a small portion of land at the Western District PCWA of approximately 217.6 square metres (marked red in Annex 2 of the LegCo Brief) needs to be released for the development of the SPS. In addition to the above, to align with the latest Government land allocation boundaries, three additional small portions of land at the entrances/exits (marked blue in Annex 2 of the LegCo Brief) with a total area of approximately 320 square metres will be incorporated into the Western District PCWA re-delineation. After these minor revisions, the total site area of the Western District PCWA will slightly increase by 100 square metres with the usable seafrontage remains unchanged.

⁴ Section 7 of Cap. 81B provides that "The area of unleased Government land situated at Western District (having an area of approximately 40200 square metres), delineated and coloured pink on the plan numbered MH 5361c signed by the Principal Government Land Surveyor on behalf of the Director of Lands on 9 May 1997 and deposited in the Urban Land Registry, is declared to be a public cargo working area."

35. As advised by the Clerk to the Panel on Economic Development, the Administration did not brief the Panel on L.N. 28.

Concluding Observations

36. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

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