

**立法會**  
**Legislative Council**

LC Paper No. LS37/08-09

**Paper for the House Committee Meeting  
on 6 February 2009**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 30 January 2009**

**Date of tabling in LegCo** : 4 February 2009

**Amendment to be made by** : 4 March 2009 (or 1 April 2009 if extended by resolution)

**Antibiotics Ordinance (Cap. 137)**  
**Antibiotics (Amendment) Regulation 2009 (L.N. 14)**

This Amendment Regulation amends Schedule 1 to the Antibiotics Regulations (Cap. 137 sub. leg. A) (the Regulations) by adding one antibiotic, namely, Daptomycin, to the list of substances to which the Antibiotics Ordinance (Cap. 137) (the Ordinance) applies.

2. Under section 4(1) of the Ordinance, only certain qualified persons including registered medical practitioners, dentists, veterinary surgeons, or registered pharmacists with prescriptions signed by a registered medical practitioner, a dentist or a veterinary surgeon are allowed to sell or otherwise supply any substance to which the Ordinance applies. Section 4(2) of the Ordinance restricts the administration or preparation of such substance by certain qualified or licensed persons only. Section 12 of the Ordinance provides that the Director of Health may by regulation prescribe the substance and definitions to which this Ordinance applies. The Regulations have been made under section 12 of the Ordinance. The effect of the amendment is that pharmaceutical products containing Daptomycin can only be sold and supplied by qualified persons including registered medical practitioners, dentists, veterinary surgeons, or registered pharmacists with prescriptions signed by a registered medical practitioner, a dentist or a veterinary surgeon.

3. Daptomycin is a new antibiotic agent derived from *Streptomyces roseosporus* which is used to treat adults with infections caused by certain sensitive bacteria. In the LegCo Brief (File Ref.: FH/H/21/10), the Food and Health Bureau explains that the addition of Daptomycin to Schedule 1 of the Regulations is to guard against the indiscriminate use of this new substance, which can give rise to the emergency of Daptomycin-resistant bacteria in the community, and thus endanger public health.

4. The Pharmacy and Poisons Board has been consulted and has recommended that Daptomycin should be included in Schedule 1 to the Regulations

for the purpose of controlling its sale and supply. The Panel on Health Services has not been consulted on this Amendment Regulation.

5. This Amendment Regulation comes into operation on 4 March 2009.

6. Members may refer to the LegCo Brief (File Ref.: FH/H/21/10) issued by the Food and Health Bureau in 29 January 2009 for background information.

**Dangerous Drugs Ordinance (Cap. 134)**

**Dangerous Drugs Ordinance (Amendment of Second Schedule) Order 2009 (L.N. 15)**

7. The Dangerous Drugs Ordinance (Cap. 134) provides that any registered pharmacist or approved person who is employed or engaged at a hospital or institution specified in its Second Schedule may in specified circumstances possess and supply dangerous drugs, and that authorized public officers may exercise power of inspection in relation to such a hospital or institution. The Dangerous Drugs Ordinance (Amendment of Second Schedule) Order 2009 (the Order) is made by the Secretary for Security under section 50(2) of the Ordinance to bring the list of hospitals or institutions in the Second Schedule up to date by adding the names of 2 institutions and 1 hospital as follows-

- (a) Po Leung Kuk Tin Yan Home for Elderly cum Green Joy Day Care Centre for the Elderly;
- (b) Yuen Yuen Nursing Home Cum Day Care Centre for the Elderly(Shun Lee Estate); and
- (c) The Hong Kong Anti-Cancer Society Jockey Club Cancer Rehabilitation Centre.

8. The Order comes into operation on 1 April 2009.

9. The Panel on Security has not been consulted on the Order.

**Hong Kong Court of Final Appeal Ordinance (Cap. 484)**

**Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009 (L.N. 16)**

**District Court Ordinance (Cap. 336)**

**District Court Civil Procedure (Fees) (Amendment) Rules 2009 (L.N. 17)**

10. L.N. 16 amends the Hong Kong Court of Final Appeal Fees Rules (Cap. 484 sub. leg. B).

11. On 21 January 2009, the Court of Final Appeal Rules Committee made the Hong Kong Court of Final Appeal (CFA) Fees (Amendment) Rules 2009 (CFA Fees Amendment Rules). The CFA Fees Amendment Rules are consequential

amendments. They are technical in nature and seek to follow the taxation procedures under Order 62 of the Rules of High Court (Cap. 4 sub. leg. A) (RHC) as revised by the Rules of High Court (Amendment) Rules 2008 (RHC Amendment Rules 2008).

12. The RHC Amendment Rules 2008 made certain amendments to the provisions governing taxation procedures in Order 62 of the RHC including:

- (a) The requirement for a party to pay to the Court a prescribed taxing fee when filing a notice of commencement of taxation (Order 62 rule 21(5)).
- (b) The provision that the party is not entitled to any refund of such fee except (i) if the bill is withdrawn within 7 days after application to set down under rule 21A(1) or (ii) where the court otherwise directs (Order 62 rule 21D(3)).

Under rule 57 of the CFA Rules (Cap. 484 sub. leg. A), the CFA is required to follow the taxation procedures under Order 62 of the RHC.

13. Consequential to the above amendments to Order 62 of the RHC and in line with the objective to facilitate early settlement and to deter the inflation of the amount claimed under the bill of costs, the CFA Rules Committee proposes the amendments contained in CFA Fees Amendment Rules to mirror the aforesaid amendments to the RHC as follows :

- (a) The prescribed taxing fee required under Order 62 rule 21(5) of the RHC will be levied on the amount of costs claimed in the bill of costs, instead of the amount of costs allowed as at present.
- (b) Regarding the refund of taxing fee prescribed under Order 62 rule 21D(3) of the RHC, 10% of the taxing fee is payable if a bill of costs is withdrawn within 7 days after the application for setting down the taxation.

14. L.N. 17 amends the District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg. C).

15. On 21 January 2009, the District Court (DC) Rules Committee made the DC Civil Procedure (Fees) (Amendment) Rules 2009 (DC Fees Amendment Rules). The DC Fees Amendment Rules are consequential amendments. They are technical in nature and seek to follow the amendments of Order 34 of Rules of District Court (RDC) (Cap. 336 sub. leg. H) as revised by the RDC (Amendment) Rules 2008. Under the RDC (Amendment) Rules 2008, Order 23A of the RDC on "directions for actions begun by writ" was repealed and Order 34 of the RDC on "pre-trial review and fixing date for trial of actions begun by writ" was repealed and replaced by a new Order 34 on "setting down for trial action begun by writ".

16. In order to correspond to the revised procedure under the new Order 34 of the RDC, the relevant fee items in the DC Civil Procedure (Fees) Rules should also be amended accordingly. The proposed amendments to the DC Civil Procedure (Fees) Rules are as follows:

- (a) The original item 2(a) of the Schedule to the District Court Civil Procedure (Fees) Rules, which sets out the fee for "Applying for pre-trial review" at \$630, will become obsolete and should be repealed, because there will no longer be any mandatory pre-trial reviews as required under the previous Order 23A and Order 34 of the RDC and parties will directly set the case down for trial without first applying for a pre-trial review.
- (b) A new fee item of "Setting down a cause or issue for hearing" at \$630 is introduced to provide the legal basis for the DC to levy the fees.

17. The two items of subsidiary legislation provide for transitional arrangements so that the position of the relevant applications made before the commencement of them would not be affected.

18. The two items of subsidiary legislation will come into operation on the day appointed for the commencement of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008) (i.e. 2 April 2009 under L.N. 18 of 2009).

19. The Panel on Administration of Justice and Legal Services was consulted on the two items of subsidiary legislation on 13 January 2009 and raised no objection. The Hong Kong Bar Association and the Law Society of Hong Kong have also been consulted on the above two items of subsidiary legislation and were generally agreeable to both items.

20. Members may refer to the two LegCo Briefs (with no file reference) respectively relating to the above two items of subsidiary legislation issued by the Judiciary Administration in January 2009 for background information.

**Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008)**  
**Civil Justice (Miscellaneous Amendments) Ordinance 2008 (Commencement)**  
**Notice (L.N. 18)**

21. By this Notice the Chief Justice appoints 2 April 2009 as the day on which the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008) (CJR Ordinance) comes into operation.

22. The Civil Justice (Miscellaneous Amendments) Bill 2007 was for implementing the recommendations made in the Civil Justice Reform which has been led by the Chief Justice with a view to streamline and improve the civil procedures. The Bill was passed with amendments on 30 January 2008.

23. The CJR Ordinance is to amend six Ordinances, namely,
- (a) High Court Ordinance (Cap. 4);
  - (b) Lands Tribunal Ordinance (Cap. 17);
  - (c) Law Amendment and Reform (Consolidation) Ordinance (Cap. 23);
  - (d) District Court Ordinance (Cap. 336);
  - (e) Small Claims Tribunal Ordinance (Cap. 338); and
  - (f) Arbitration Ordinance (Cap. 341)

24. As regards the amendments to subsidiary legislation in relation to the Civil Justice Reform, the Rules of High Court (Cap. 4 sub. leg. A), the High Court Fees Rules (Cap. 4 sub. leg. D), the High Court Suitors' Funds Rules (Cap. 4 sub. leg. B), the Lands Tribunal Rules (Cap. 17 sub. leg. A), the Rules of the District Court (Cap. 336 sub. leg. H), the District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg. C) and the District Court Suitors Fund Rules (Cap. 336 sub. leg. E), the amendments were gazetted on 6 June 2008 in L.N. 152 to L.N. 158 of 2008. Under the respective section 1 of these items of subsidiary legislation, they shall come into operation on the day appointed for the commencement of the CJR Ordinance (i.e. 2 April 2009).

25. The Judiciary Administration briefed the Panel on Administration of Justice and Legal Services on the progress in relation to the implementation of Civil Justice Reform at the Panel's meeting on 13 January 2009. Members of the Panel noted that the Judiciary, the Hong Kong Bar Association and the Law Society of Hong Kong had launched training programmes to prepare judges and legal practitioners for the implementation of Civil Justice Reform and that the two legal professional bodies had indicated their readiness for the implementation of Civil Justice Reform by 2 April 2009. Members of the Panel did not raise any queries on the proposed commencement of Civil Justice Reform. Members may refer to the paper prepared by the Judiciary Administration in January 2009 (LC Paper No. CB(2)601/08-09(06)) for further information.

**Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A)**  
**Tax Reserve Certificates (Rate of Interest) (No. 2) Notice 2009 (L.N. 19)**

26. By this Notice made by the Secretary for Financial Services and the Treasury under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A), the rate of interest payable on tax reserve certificates issued on or after 2 February 2009 is fixed at 0.2667% per annum (the new rate). The Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289 sub. leg. B) is consequentially amended by inserting "and before 2 February 2009" in item 166 and adding the new rate as item 167.

27. This Notice has not been discussed by the Panel on Financial Affairs.
28. No difficulties in relation to the legal and drafting aspects of the above items of subsidiary legislation have been identified.

Prepared by  
YICK Wing-kin  
Assistant Legal Adviser  
Legislative Council Secretariat  
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