

**立法會**  
**Legislative Council**

LC Paper No. LS51/11-12

**Paper for the House Committee Meeting  
on 13 April 2012**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 23 March 2012**

**Date of tabling in LegCo** : 28 March 2012

**Amendment to be made by** : 25 April 2012 (or 16 May 2012 if extended by resolution)

**Air Pollution Control Ordinance (Cap. 311)  
Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment)  
Regulation 2012 (L.N. 46)**

The Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311 sub. leg. J) (the principal Regulations), which are made by the Secretary for the Environment under section 43(1)(g) of the Air Pollution Control Ordinance (Cap. 311), provide, among other matters, that motor vehicles must be so constructed that the emissions from them conform to the emission standards specified in the various Schedules to the principal Regulations. Those emission standards were tightened in 2005 and 2006 for newly registered motor vehicles to meet Euro IV emission standards (L.N. 165 of 2005 and L.N. 111 of 2006).

2. L.N. 46 amends the principal Regulations to impose more stringent design standards on certain motor vehicles in order to reduce the emission of air pollutants from them. It requires the following classes of newly registered vehicles to comply with Euro V emission standards which are set out in the new Schedule 16 to the principal Regulations:

- (a) goods vehicles equipped with a compression-ignition engine with a design weight of not more than 3.5 tonnes (diesel light goods vehicles) which are registered on or after 31 December 2012; and
- (b) all other classes of motor vehicles (i.e. private cars, taxis, goods vehicles other than diesel light goods vehicles, and light buses) registered on or after 1 June 2012.

3. It is noted that paragraph (b)(iii) of Part II of the new Schedule 16 to the principal Regulations refers to "the Environmental Protection Agency United States of America" whereas the new regulation 14(12)(a) and paragraph (b)(iii) of the existing Schedule 14 to the principal Regulations refer to "the Environmental Protection Agency of the United States of America". Upon enquiry by the Legal Service Division (LSD), the Environmental Protection Department (EPD) has replied that the omission of the words "of the" does not change the original meaning, and as such EPD will not amend L.N. 46 to rectify that omission. While it is desirable that there is consistency in the drafting of provisions in the principal Regulations, we consider that the omission of the words "of the" is unlikely to cause interpretation difficulties.

4. Members may refer to the LegCo Brief (File Ref.: EP150/L1/2) issued by EPD in March 2012 for background information. According to paragraphs 9 to 12 of the LegCo Brief, vehicle suppliers, including local representatives of major motor vehicle and bus manufacturers, as well as operators of trucks, taxis, public light buses and non-franchised buses, have been consulted and have no objection to the proposal. However, the Right Hand Drive Motor Association (Hong Kong) Limited (RHDA), which represents parallel importers, has requested the Government to provide a six-month transitional period to exempt imported second-hand private cars manufactured after 2005 from the Euro V emission standards. EPD does not recommend acceding to RHDA's request given the abundant supply of second-hand private cars which are Euro V-compliant. However, EPD is prepared to consider specific stock-clearing proposals from RHDA. According to EPD, it has also consulted the Advisory Council on the Environment which supports the proposal.

5. The Panel on Environmental Affairs was briefed on the proposal at its meeting on 21 December 2011. While the Panel did not object to the proposal, some members enquired about the feasibility of allowing a six-month transitional period for parallel importers to clear their stocks and to deliver orders which had been placed before the tightening of emission standards. Other members stressed the need to enhance the maintenance and repair standard through training with a view to encouraging the use of environment-friendly vehicles in Hong Kong, and to introduce financial disincentives to discourage the continued use of aged and polluting vehicles. Members may refer to the minutes of the meeting (LC Paper No. CB(1)966/11-12) for details.

6. L.N. 46 will come into operation on 1 June 2012.

**Legal Practitioners Ordinance (Cap. 159)**  
**Higher Rights of Audience Rules (L.N. 47)**

7. The Legal Practitioners (Amendment) Ordinance 2010 (2 of 2010) (LPAO), which was published in the Gazette on 29 January 2010, amends the Legal Practitioners Ordinance (Cap. 159) (the principal Ordinance) to grant higher rights of

audience to solicitors before the High Court and the Court of Final Appeal in civil and criminal proceedings (higher rights). The new section 39H of the principal Ordinance provides that a solicitor who satisfies the relevant eligibility requirements may apply to the Higher Rights Assessment Board (the Board) for higher rights. By L.N. 51 of 2010, the provisions relating to the establishment of the Board and the power of the Board to make rules in relation to applications for higher rights were brought into operation on 2 July 2010. The other provisions (sections 39H to 39R of the principal Ordinance), which relate to the Board's determination of an application for higher rights, the conditions for granting the application, the loss, cessation and re-acquisition of higher rights, the keeping of a list of solicitors having higher rights, and the issuance of higher rights certificates and a code of conduct for solicitor advocates, have not come into operation pending the making of the relevant rules by the Board.

8. L.N. 47 is made by the Board under section 73CA of the principal Ordinance and section 29 of the Interpretation and General Clauses Ordinance (Cap. 1)<sup>1</sup> to provide for:

- (a) the form of application and fees (which are set out in the Schedule to L.N. 47), the demonstration of professional competence by sitting and passing a full assessment, and the election to make an application on the basis of exemption from the requirements to sit and pass a full assessment (election);
- (b) the procedures relating to applications for which no election has been made, and the mechanism for an applicant to make written representations to the Board requesting it to review its decision in certain circumstances;
- (c) the procedures relating to applications for which an election has been made, the alternative requirements which an applicant must satisfy, and the sitting and passing of a specified portion of the full assessment;
- (d) the establishment of Examining Panels to conduct assessments of professional competence, and the issuance of competency standards and assessment guidelines; and
- (e) miscellaneous matters including the procedure to be followed by the Board in making enquiries with the Council of The Law Society of Hong Kong.

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<sup>1</sup> Section 29(1A) of Cap. 1 provides that where an Ordinance confers a power on a person to make subsidiary legislation, the subsidiary legislation may impose a fee or charge for anything in it or the Ordinance.

Members may refer to the LegCo Brief (no file reference provided) issued by the Board in March 2012 for background information.

9. Section 39G(6) of the principal Ordinance provides that the Board may regulate its own procedure. However, L.N. 47 does not specify how the Board is to review its decisions. Upon enquiry by LSD, the Board has advised that it will generally conduct "paper" reviews which involve examining a comprehensive video and written record of the assessment of the applicant seeking the review, the video and written records of other applicants who sat the assessment and, if necessary, records of earlier assessments. Where a complaint encompasses matters of personal bias, the Board may also seek written representations from the examiner concerned. In exceptional circumstances, the Board may invite the applicant and/or members of the Examining Panel to make oral representations. Upon conducting a review, the Board may confirm or reverse its decision, or direct the applicant to re-sit just a portion of an assessment. The Board has confirmed that its review decision, which is final under rule 9(5) of L.N. 47, will be subject to judicial review.

10. In response to our enquiries, the Board has further advised as follows-

- (a) the proposed competency standards and assessment guidelines will be circulated in the near future to members of the profession for comment. Once finalized, the standards and guidelines will be posted on the Board's website and passed to the Law Society and the Bar Association for circulation; and
- (b) the fees set out in the Schedule to L.N. 47 are calculated in accordance with the guidelines under the Costing Manual of the Treasury, and have been scrutinized and agreed by the Financial Services and Treasury Bureau (FSTB).

11. The Panel on Administration of Justice and Legal Services was consulted on the proposed higher rights of audience rules (the rules) at its meeting on 30 January 2012. The Board advised that it would be in a position to invite applications for higher rights once the rules were made and that more Examining Panels could be set up, if necessary, for the purpose of conducting assessments of professional competence. Members noted that the rules were technical in nature and raised no query on them. Members agreed that the Panel Chairman should recommend to the House Committee that it was not necessary to form a subcommittee to study the rules when they were tabled at the Legislative Council for negative vetting so that applications for higher rights could be invited and processed as soon as possible.

12. L.N. 47 will come into operation on the day on which section 4 of the LPAO (insofar as it relates to sections 39H to 39R of the new Part IIIB of the principal Ordinance) comes into operation. By virtue of section 2 of the LPAO, those sections will come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette. Upon enquiry by LSD, the Board has advised that the Administration intends to bring L.N. 47 and the remaining sections of the new Part IIIB of the principal Ordinance into operation in late June or early July 2012.

**Securities and Futures Ordinance (Cap. 571)**

**Securities and Futures (Offences and Penalties) (Amendment) Regulation 2012 (L.N. 45)**

**Securities and Futures (Short Position Reporting) Rules (L.N. 48)**

L.N.48

13. L.N. 48 is made by the Securities and Futures Commission (the Commission) under section 397 of the Securities and Futures Ordinance (Cap. 571) (SFO) to introduce a short position reporting regime in respect of specified shares. "Specified shares" are those set out in Schedule 1 to L.N. 48 and include constituent shares of the Hang Seng Index or the Hang Seng China Enterprises Index, "designated security" and financial stocks. "Short position" means the position in the specified shares that a person has as a result of selling the specified shares at or through the Stock Exchange or by means of any one or more authorized automated trading services (ATS) to be specified in Schedule 2, which is currently left blank. Upon enquiry by LSD, FSTB has explained that Schedule 2 is left blank because at this stage there is no authorized ATS that is an important trading venue of securities in the Hong Kong market. According to paragraph 13 of the LegCo Brief (File Ref.: SUB14/1/4(2010)) issued by FSTB in March 2012, the Commission may later amend Schedule 2 to specify the authorized ATSs.

14. The reporting requirements under rules 4 and 7 of L.N. 48 are summarized as follows:

- (a) a person with a reportable short position in any specified shares at the close of trading on the last trading day of each week is required to notify the Commission within two business days (rule 4(2));
- (b) if the Commission believes there are circumstances threatening the financial stability of Hong Kong, the Commission may publish a daily reporting requirement notice in the Gazette requiring any person who has a reportable short position at the close of trading on each day to notify the Commission of such position within one business day (rules 4(4) and 7). A daily reporting requirement notice in the Gazette is not subsidiary legislation (rule 7(4));

- (c) if the short position in specified shares is held on trust, then the trustee has the duty to report (rule 4(5));
- (d) for corporations, the short position in any specified shares that is attributable to more than one collective investment scheme must be reported separately (rule 4(6));
- (e) a person who has short positions in any specified shares as a partner in more than one partnership must report the short position attributable to each partnership separately (rule 4(7)); and
- (f) if the partners in a partnership have a reportable short position, then a notice submitted by a partner or another person authorized by all the partners in the partnership is regarded as having complied with the reporting requirements (rule 4(8)).

15. Notification to the Commission under rule 4(2) or (4) must be in the form specified by the Commission and submitted electronically by means of an online communication system designated by the Commission under rule 5. Upon enquiry by LSD, FSTB has confirmed that the Commission consulted a few industry associations and investment banks in the past months on the proposed form and online communication system, and that no concern was raised. According to FSTB, the Commission will specify the form and designate the online communication system in time for the completion of the legislative process.

16. Rule 6 requires the Commission to publish particulars of the reportable short positions notified to it. It also requires that any such published particulars, so far as reasonably practicable, be presented in a way which prevents the identity of a person who has submitted a notice under rule 4(2) or (4) and that person's reportable short position from being ascertained from it.

#### L.N. 45

17. L.N. 45 is made by the Chief Executive in Council under section 398(6) of the SFO. It amends the Securities and Futures (Offences and Penalties) Regulation (Cap. 571, sub. leg. AH) to make it an offence for a person, without reasonable excuse, to contravene the reporting requirements as provided in rule 4(2) or (4) of L.N. 48. Under L.N. 45, the penalty for contravening the above reporting requirements is a fine at level 6 (i.e. \$100,000) and imprisonment for 2 years upon conviction on indictment, and a fine at level 3 (i.e. \$10,000) and imprisonment for 6 months upon summary conviction.

18. Members may refer to the LegCo Brief (same as for L.N. 48) for background information. Paragraph 20 of the LegCo Brief states that the Commission consulted the public in July 2009 on the proposed reporting regime, and in May and October 2011 on the draft rules on short position reporting, which received broad market support. According to the Administration, comments from the market have been incorporated into L.N. 48 where appropriate.

19. The Panel on Financial Affairs discussed the Commission's proposal for a short position reporting regime at its meetings on 4 July 2011 and 6 January 2012. During the discussions, Panel members expressed various concerns, including whether short-sellers might find means to circumvent the reporting requirements, and whether the short-selling system in Hong Kong only facilitated large overseas investment institutions and investors to manipulate the stock market in Hong Kong to the detriment of small investors. In response, the Administration advised that in implementing measures to regulate the stock market, the Government and the regulatory bodies aimed to strike a balance between market development and investor protection, and that they would keep a close watch on short-selling activities to ensure the orderly operation of the Hong Kong stock market. Members may refer to the minutes of the meetings of 4 July 2011 and 6 January 2012 (LC Papers No. CB(1)324/11-12 and CB(1)1145/11-12) and the supplementary information subsequently provided by the Administration (LC Paper No. CB(1)969/11-12(02)) for further details.

20. L.N. 45 and L.N. 48 (except rule 6) will come into operation on 18 June 2012. Rule 6 of L.N. 48 will come into operation on a day to be appointed by the Commission by notice published in the Gazette. According to paragraph 15 of the LegCo Brief, the Commission intends to bring rule 6 into operation in August 2012 so that it would have some lead time to ensure proper collation and disclosure of data under the rule.

### **Concluding observation**

21. No difficulties have been identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

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