

**立法會**  
**Legislative Council**

LC Paper No. LS54/14-15

**Paper for the House Committee Meeting  
on 10 April 2015**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 20 March 2015**

**Tabling in LegCo** : Council meeting of 25 March 2015

**Amendment to be made by** : Council meeting of 22 April 2015 (or that of  
13 May 2015 if extended by resolution)

**Merchant Shipping (Prevention and Control of Pollution) (Fees)  
(Amendment) Regulation 2015** (L.N. 53)

**Merchant Shipping (Control of Harmful Anti-Fouling  
Systems on Ships) Regulation** (L.N. 54)

**L.N. 54**

Background

L.N. 54 is made by the Secretary for Transport and Housing (the Secretary) under section 3(2) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) to implement the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (the Convention) by setting out the relevant requirements that are applicable to non-Hong Kong ships within Hong Kong waters as well as Hong Kong ships<sup>1</sup> wherever they are.<sup>2</sup> Members may refer to LegCo Brief (File Ref: THB(1)PML R8/10/70/3) dated 18 March 2015 issued by the Transport and Housing Bureau for background information on L.N. 54. Please note that it covers both L.N. 53 and L.N. 54.

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<sup>1</sup> Section 2 of Cap. 413 defines "Hong Kong ship" to mean a ship registered in Hong Kong; and a vessel required to be certificated under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

<sup>2</sup> According to the LegCo Brief (File Ref: THB(1)PML R8/10/70/3) dated 18 March 2015 issued by the Transport and Housing Bureau, the Convention was adopted by the International Maritime Organization (IMO) to prohibit the use of organotin compounds in anti-fouling systems of ships for the protection of the marine environment. The Convention entered into force internationally on 17 September 2008. China ratified the Convention in March 2011. Subject to the coming into force of L.N. 54, the Administration will request the Central People's Government to notify the IMO the extension of the Convention to Hong Kong.

### Main provisions of L.N. 54

2. Subject to certain exceptions, a ship must not bear any organotin compounds that act as biocides in the anti-fouling system<sup>3</sup> of the ship (section 4).

3. A ship of 400 gross tonnage or above and engaged in an international voyage must have a valid International Anti-Fouling System Certificate<sup>4</sup> in respect of the ship (section 6). For a ship engaged in an international voyage that is less than 400 gross tonnage but is 24 meters or more in length, although no certification is needed, it is required to carry on board a declaration signed by the owner of the ship or his authorized agent that the ship's anti-fouling system complies with the Convention (section 11). The Director of Marine (the Director) has the power to issue an IAFS Certificate<sup>5</sup> in respect of a Hong Kong ship; endorse on an International Anti-Fouling System Certificate where if, after an International Anti-Fouling System Certificate has been issued in respect of a Hong Kong ship, 25% or more of the ship's anti-fouling system has been changed, replaced or affected by a repair, provided that the Director is satisfied with specified conditions; and to cancel an International Anti-Fouling System Certificate (sections 7 to 9). The owner and the master of a ship are required to keep an International Anti-Fouling System Certificate on board the ship in respect of which the International Anti-Fouling System Certificate is issued (section 10). The Director may appoint a person to be a Government surveyor to, among other things, inspect, examine or investigate a ship in Hong Kong waters (sections 12 to 13). The Director may recognize an organization for, among other things, carrying out surveys of anti-fouling systems of specified Hong Kong ships (section 15).<sup>6</sup>

### Application of Direct Reference Approach

4. Section 3A of Cap. 413 provides that for the purpose of giving effect to any provisions of any international agreements applicable to Hong Kong as in force from time to time; and so far as the agreement relates to any matter for or in relation to which provision may be made by regulations made Cap. 413, any such regulations may set out or refer to those provisions and specify modifications subject to which those provisions shall have effect (Direct Reference Approach (DRA)). Paragraph 7 of the LegCo Brief sets out the factors to be taken into account when adopting DRA. Annex C to the LegCo

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<sup>3</sup> Section 2 of L.N. 54 defines "anti-fouling system" to mean a coating, paint, surface or device that is used on a ship to control or prevent attachment of unwanted organisms.

<sup>4</sup> Section 2 of L.N. 54 defines "International Anti-Fouling System Certificate" to mean, among other things, certain certificates issued by specified authorities in conformity with Annex 4 to the Convention.

<sup>5</sup> Section 2 of L.N. 54 defines "IAFS" Certificate to mean a certificate issued by the Director under section 7.

<sup>6</sup> According to paragraph 10 of the LegCo Brief, the power given to the Director to recognize organizations to survey ships, etc. is in line with established practice.

Brief contains the provisions of L.N. 54, against the aforesaid factors, identified by the Administration to be suitable for the application of DRA.

### **L.N. 53**

5. L.N. 53 amends the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413L) to provide for the fees for the services to be provided by the Government under L.N. 54, namely the fees for an initial survey or additional survey and the issue of an IAFS Certificate within the meaning of L.N. 54 of 2015. Please note that the LegCo Brief on this item is the one that covers L.N. 54 as well. Members may also refer to LegCo Brief mentioned in paragraph 1 above for background information on L.N. 53.

6. L.N. 53 and L.N. 54 come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

7. As advised by the Clerk to the Panel on Economic Development, the Administration did not brief the Panel on L.N. 53. As regards L.N. 54, the Administration consulted the Panel at the meeting held on 16 December 2014 on L.N. 54. Members noted that the Convention had been in force since 2008 while China ratified it in 2011. They requested the Administration to expedite the relevant legislative work as the compliance of international conventions, including the Convention, was essential in upholding the international image of Hong Kong.

8. The Legal Service Division has written to the Administration to clarify some legal and drafting points in relation to L.N. 54. Upon our enquiry on the differences in the Chinese meaning of "unwanted organisms" in L.N. 54 and the Convention, the Administration replied that whilst they noted that "unwanted organisms" is referred to as "不利生物" in the Chinese text of the Convention, it may not be clear when the term "不利生物" is used to explain the meaning of "防污底系統" from the law drafting perspective. They have therefore adopted the phrase "不利航行的生物" to clarify the meaning of "不利" in the context of anti-fouling systems on ships. Upon our enquiry on whether there should be a mechanism for the certificate holder to apply to review the Director's decision to cancel certain certificates in respect of Hong Kong ships under section 9, the Administration replied that since the Director may only cancel the certificate based on the facts of the case which involve no value judgment and the ship owner, if not satisfied, may dispute the grounds for cancellation through available legal and administrative means (such as judicial review or a complaint against the department's administration or decision), they do not think that it is necessary to provide for a separate appeal or review mechanism. Upon our enquiry on whether sections 16 and 17 refer to a Hong

Kong ship or a non-Hong Kong ship in relation to endorsement of a certificate, in particular sections 16(c) and 17(c), the Administration confirmed that section 16 provides that the Director may, at the request of any Convention country, take specified actions in respect of a non-Hong Kong ship and section 17 allows the Director to request any Convention countries to take specified actions in respect of a Hong Kong ship.

**Places of Public Entertainment (Exemption) (Amendment)  
Order 2015**

**(L.N. 55)**

9. L.N. 55 is made by the Secretary for Home Affairs (the Secretary) under section 3A of the Places of Public Entertainment Ordinance (Cap. 172) to amend the Places of Public Entertainment (Exemption) Order (Cap. 172D) by adding a new exemption for a place that is under the management of the Judiciary from the operation of sections 4 and 11 of Cap. 172.

10. Section 4(1) of Cap. 172 provides that no person shall keep or use any place of public entertainment<sup>7</sup> without a licence granted under Cap. 172. Any person who contravenes section 4(1) shall be guilty of an offence. Further, section 11 of Cap. 172 empowers the licensing authority, i.e. the Secretary or an authorised public officer to apply to a magistrate for an order to close a place of public entertainment kept or used in contravention of Cap. 172.

11. According to paragraphs 5 and 6 of the LegCo Brief (File Ref: SF(7) to HAB/CR/1/9/39) issued by the Home Affairs Bureau on 18 March 2015, No. 8 Jackson Road is now being renovated to accommodate the Court of Final Appeal (CFA) which is scheduled for relocation in the second half of 2015. The Judiciary is responsible for the management of this new CFA building. As part of this project, the Judiciary will provide two galleries (one on the first floor of the building and the other one at the basement of the building) where exhibits and displays will be shown to show the history of the Judiciary and the architectural aspects of the building. The Administration is of the view that the showing of such exhibits and displays in the galleries is considered to amount to "public entertainment" under Cap. 172, and that since it is the Judiciary's plan to admit members of the public to the galleries, the building will be "a place of public entertainment" within the meaning of Cap. 172.

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<sup>7</sup> According to section 2 of Cap. 172, "entertainment" includes any event, activities or other things specified in Schedule 1 to Cap. 172 and "public entertainment" means any entertainment within the meaning of Cap. 172 to which the general public is admitted with or without payment.

12. The exemption effected by L.N. 55 would exempt the Judiciary from applying for a licence for conducting the proposed activities in the preceding paragraph.

13. As advised by the Clerk to the Panel on Home Affairs, on 29 January 2015, the Administration issued to the Panel an information paper on the proposal to amend Cap. 172D under Cap. 172 [LC Paper No. CB(2)751/14-15(01)]. Members noted that the proposed amendments sought to grant an exemption to provide that a place under the management of the Judiciary was exempt from the operation of sections 4 and 11 of Cap. 172. Members did not request discussion of or make any comments on the proposal.

14. The Order comes into operation on 22 May 2015.

15. The Legal Service Division has written to the Administration to clarify the scope of exemption under L.N. 55. The Administration replied that as Section 3A(1) of Cap. 172 provides that the Secretary may by order published in the Gazette exempt places of public entertainment which are of a specified class or description from Cap. 172 or particular provisions of Cap. 172 specified in the order, an exemption confined to No. 8 Jackson Road is not suggested as it would be an exemption granted to an individual place and not a class of places, and is thus inconsistent with section 3A(1) of Cap. 172. The Administration considers the exemption justifiable given the Judiciary has all along conducted its business in a prudent manner, and has indicated that it will adopt the same approach, exercising caution and putting in place the necessary precautionary measures in upholding public safety and public order when it conducts relevant activities on the premises under its management. The Judiciary has no plan for the time being to carry out any activity within the meaning of "public entertainment" at places, other than No. 8 Jackson Road, under the management of the Judiciary.

#### **Adoption (Amendment) Rules 2015**

**(L.N. 56)**

#### **Convention Adoption (Amendment) Rules 2015**

**(L.N. 57)**

16. L.N. 56 amends rule 8(2) of the Adoption Rules (Cap. 290A) and L.N. 57 amends rule 11(4) of the Convention Adoption Rules (Cap. 290D) to increase in three phases the fee payable to the Director of Social Welfare (DSW) for acting as the guardian ad litem<sup>8</sup> (GAL) of an infant as follows –

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<sup>8</sup> Under rule 2 of Cap. 290A, "guardian ad litem" (訴訟監護人) means the guardian ad litem of an infant for the purposes of the application for an adoption order other than a Convention adoption order that relates to the infant. Under rule 2 of Cap. 290D, "guardian ad litem" (訴訟監護人) means a guardian ad litem of an infant for the purposes of the application for a Convention adoption order that relates to the infant.

- (a) from 1 June 2015, the fee will increase from \$2,840 to \$3,170, i.e. by 11.6% (in dollar terms, \$330);
- (b) from 1 June 2016, the fee will increase from \$3,170 to \$3,550, i.e. by 12% (in dollar terms, \$380); and
- (c) from 1 June 2017, the fee will increase from \$3,550 to \$3,970 i.e. by 11.8% (in dollar terms, \$420).

17. Under section 4 of the Adoption Ordinance (Cap. 290), the Court may, upon an application made in the prescribed manner, make an order authorizing the adoption of an infant, i.e. a person under the age of 18 who is not or has not been married. Cap. 290D provides for rules relating to Convention<sup>9</sup> adoption and Cap. 290A provides for the rules relating to non-Convention adoption. Under both Cap. 290A and Cap. 290D, GAL shall, among other things, investigate as fully as possible all circumstances relevant to the proposed adoption with a view to safeguarding the interests of the infant before the Court and to make a report to the Court for that purpose.

18. According to paragraphs 5, 6 and 8 of the LegCo Brief (File Ref: LWB CR 1/2321/07) issued by the Labour and Welfare Bureau on 18 March 2015, the current GAL fees under Cap. 290A and Cap. 290D have not been revised since 1997 and 2006 respectively. The Administration seeks to recover 20% of the full proper cost incurred by DSW in the execution of statutory duties under Cap.290A or Cap. 290D. The Administration proposes to increase each of the two GAL fee items under Cap. 290A and Cap. 290D by about 12% in each of three consecutive years starting from June 2015. After increasing the two GAL fee items to \$3,970 on 1 June 2017, DSW would review the two GAL fee items every year with a view to bringing the fees to the target of 20% of the full cost. Members may refer to the LegCo Brief for background and further information.

19. As advised by the Clerk to the Panel on Welfare Services, the Panel was consulted at its meeting on 9 February 2015 on two options for the Administration's proposed revisions to two GAL fee items related to adoption service. Members noted that one of the options was to increase the two GAL fees from \$2,840 to \$3,970 on 1 June 2015 in one go. Members preferred another option which would implement the fee revisions incrementally. Under such option, the fees would be increased from \$2,840 to \$3,170 with effect from 1 June 2015, from \$3,170 to \$3,550 with effect from 1 June 2016 and from

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<sup>9</sup> Under section 20A of Cap. 290, "the Convention" (《公約》) means the Convention on Protection of Children and Co-operation in respect of Inter-country Adoption done at the Hague on 29 May 1993 or such Convention as may be amended from time to time and as applied to Hong Kong.

\$3,550 to \$3,970 with effect from 1 June 2017. Some Members also called on the Administration to relax the adoption criteria as well as review its policies and services in relation to adoption, foster care and children's homes.

### **Concluding Observations**

20. In light of the Administration's replies to our enquiries about L.N. 54 and L.N. 55, no difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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