

立法會
Legislative Council

LC Paper No. LS69/14-15

**Paper for the House Committee Meeting
on 5 June 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 29 May 2015**

Tabling in LegCo : Council meeting of 3 June 2015

Amendment to be made by : Council meeting of 24 June 2015 (or the first meeting of the next session if extended by resolution)

Pharmacy and Poisons (Amendment) (No. 4) (L.N. 100)
Regulation 2015

L.N. 100 is made by the Pharmacy and Poisons Board (the Board) under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health. It amends the Pharmacy and Poisons Regulations (Cap. 138A) by adding -

- (a) the following six substances to Division A of the First Schedule and Division A of the Third Schedule to Cap. 138A -
 - (i) Elosulfase alfa;
 - (ii) Nalmefene; its salts;
 - (iii) Olodaterol; its salts;
 - (iv) Vismodegib; its salts;
 - (v) Lignocaine; its salts in mixture with tetracaine or in mixture with the salts of tetracaine;
 - (vi) Tetracaine (being an amino alcohol esterified with a derivative of benzoic acid); its salts in mixture with lignocaine or in mixture with the salts of lignocaine; and
- (b) the substances listed in paragraph (a)(i) to (iv) above to Division A of Part I of the Poisons List set out in Schedule 10 to Cap. 138A.

2. The effect of these amendments is to make the above substances subject to the restrictions imposed under Cap. 138 and Cap. 138A. Substances included in the First Schedule to Cap. 138A are subject to restrictions concerning their sale, supply, labelling and storage. Substances included in the Third Schedule to Cap. 138A can be sold by retail only upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Poisons containing substances listed in Part I of the Poisons List set out in Schedule 10 to Cap. 138A can only be sold, among other applicable requirements, on registered premises of an authorized seller of poisons by a registered pharmacist or in the presence and under the supervision of a registered pharmacist.

3. According to paragraph 4 of the LegCo Brief (File Ref: FHB/H/23/4) issued by the Food and Health Bureau on 26 May 2015, the Board considers these amendments appropriate in view of the potency, toxicity and potential side effects of the above substances. Members may refer to Annex B of the LegCo Brief for details of the above substances.

4. L.N. 100 came into operation on the day of publication in the Gazette, i.e. 29 May 2015.

5. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 100.

Foreign Lawyers Practice (Amendment) Rules 2015 (L.N. 101)

Solicitors' Practice (Amendment) Rules 2015 (L.N. 102)

Limited Liability Partnerships (Top-up Insurance) Rules (L.N. 103)

6. L.N.101 to L.N. 102 are made by the Council (the Council) of The Law Society of Hong Kong (the Law Society) under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. L.N. 103 is made by the Council under section 73A(3)(fa) of Cap. 159 (added by the Legal Practitioners (Amendment) Ordinance 2012 (Ord. No. 22 of 2012) (the Amendment Ordinance)) with the prior approval of the Chief Justice.

Background

7. The Amendment Ordinance was enacted in 2012 to amend Cap. 159 to introduce an additional mode of operation in the form of limited liability partnership (LLP) for solicitors. A partner in an LLP is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation that arises

from the provision of professional services by the partnership as an LLP as a result of a default of another partner or an employee, agent or representative of the partnership, provided that certain conditions are satisfied (section 7AC). One of the conditions is that the partnership must have complied with the top-up insurance requirement (section 7AD). An LLP is required to include, if it has a Chinese name, the words "有限法律責任合夥" as part of that Chinese name, and if it has an English name, the words "Limited Liability Partnership" or the abbreviation "LLP" or "L.L.P." as part of that English name (section 7AJ).

8. Pursuant to section 2 of the Amendment Ordinance, it comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette. The Amendment Ordinance has not yet come into operation pending, according to paragraph 7 of the LegCo Brief issued by the Law Society on 14 May 2015 (no file reference provided), finalization of the implementation details, one of which is the making of rules for the better carrying out of section 7AD pursuant to section 73A(3)(fa). Further, according to paragraph 20 of the LegCo Brief, the Law Society hopes that the commencement of the Amendment Ordinance and all relevant subsidiary legislation will be within 2015.

L.N. 101 and L.N. 102

9. Under section 4 of the Foreign Lawyers Practice Rules (Cap. 159R), a foreign firm is permitted to use as its name the name of an overseas firm of which the foreign firm is a branch. Consequently, if the firm name of the overseas parent office of a foreign firm includes "LLP" as part of its registered name, the foreign firm will be allowed to use that name in Hong Kong even though there is no legislation on LLP in force in Hong Kong.

10. Under rule 2A(2)(b) of the Solicitors' Practice Rules (Cap. 159H), a firm (Hong Kong firm) which is established as a branch of an overseas firm is permitted to use, subject to certain conditions, the name of the overseas firm as its name.

11. After commencement of the Amendment Ordinance, in particular section 7AJ (see paragraph 7 above), those foreign firms (referred to in paragraph 9 above) and Hong Kong firms (referred to in paragraph 10 above) which are not LLPs registered in Hong Kong should not be permitted to include "LLP" as part of their firm names.

12. L.N. 101 amends section 4 of Cap. 159R by adding new section 4(3) and L.N. 102 amends rule 2A to Cap. 159H by adding new rule 2A(3) to provide that except for a foreign firm or Hong Kong firm that is an LLP within the meaning of section 7AB of Cap. 159, a foreign firm or Hong Kong firm -

- (a) must not include, in its English name, the words "limited liability partnership"; the abbreviation "L.L.P." or "LLP"; or any words or abbreviations that convey the message that the firm is an LLP within the meaning of section 7AB of Cap. 159;
- (b) must not include, in its Chinese name, the words "有限法律責任合夥"; or any words or abbreviations that convey the message that the firm is an LLP within the meaning of section 7AB of Cap. 159; and
- (c) must not include, if the firm has a name in a language other than English or Chinese, as part of that name, any words or abbreviations that convey the message that the firm is an LLP within the meaning of section 7AB of Cap. 159.

13. In addition, L.N 101 amends section 9(1B) of Cap. 159R (added by the Amendment Ordinance) and L.N. 102 amends rule 5(1B) of Cap. 159H (added by the Amendment Ordinance) to ensure that after the coming into operation of rule 5 of L.N. 103 (proof of firm's compliance with section 7AD of Cap. 159), there would not be any conflict or inconsistency between the requirements for provision of evidence to the Law Society to show the firm's compliance with section 7AD of Cap. 159 under section 9(1B) of Cap. 159R and rule 5(1B) of Cap. 159H, and the requirement for the same under rule 5 of L.N. 103.

L.N. 103

14. Section 7AD of Cap. 159 sets out the top-up insurance requirement for an LLP. The policy of insurance required to be maintained by an LLP must comply with any indemnity rules made under section 73A(3)(fa) of Cap. 159. L.N. 103 are the rules so made to provide for the better carrying out of section 7AD.

15. Rule 3 of L.N. 103 provides that a policy of insurance required to be maintained under section 7AD of Cap. 159 must be written by a company authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on, in or from Hong Kong, insurance business of the nature specified in class 13 in Part 3 of the First Schedule to Cap. 41 (i.e. general liability), the society of underwriters known in the United Kingdom as Lloyd's, or an association of underwriters approved by the Insurance Authority appointed under section 4 of Cap. 41¹.

¹ It is noted that a Bills Committee has been formed to scrutinize the Insurance Companies (Amendment) Bill 2014 which seeks to amend Cap. 41. It is also noted that the Bill proposes certain amendments to sections 4 and 8 of Cap. 41.

16. Rule 4 of L.N. 103 sets out the scope of the top-up insurance requirement which is as follows -

- (a) for an LLP that is a Hong Kong firm, the policy of insurance must provide indemnity in respect of any description of civil liability whatsoever incurred in connection with its Practice², in a manner and to the extent similar to the indemnity provided to a solicitor under the fund established under rule 3 of the Solicitors (Professional Indemnity) Rules (Cap. 159M)³; and
- (b) for an LLP that is a foreign firm, the policy of insurance must provide indemnity in respect of services rendered by the firm, in a manner and to the extent similar to the indemnity provided to a foreign lawyer under section 6 of the Foreign Lawyers Registration Rules (Cap. 159S)⁴.

17. Rule 5 of L.N. 103 requires a principal in a firm that is an LLP to provide to the Law Society evidence that it requires to show the firm's compliance with section 7AD of Cap. 159. Such evidence must be provided in the form and manner specified by the Law Society within a specified period and may be provided by one principal on behalf of all the other principals.

Other points

18. L.N. 101 to L.N. 103 come into operation on the day on which the Amendment Ordinance comes into operation.

19. Members may refer to the LegCo Brief for further information.

20. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 101 to L.N. 103.

² Under rule 4(3) of L.N. 103, Practice is defined to have the meaning given by rule 2 of the Solicitors (Professional Indemnity) Rules (Cap. 159M).

³ Rule 3 of Cap. 159M provides, among others, that the fund shall provide indemnity against such loss as is mentioned in section 73A(1) of Cap. 159 (loss arising from claims in respect of any description of civil liability incurred by a solicitor in connection with his practice, etc.) in specified indemnity periods.

⁴ Section 6 of Cap. 159S provides, among others, that a foreign lawyer shall hold a policy of insurance under which he or she is entitled to be indemnified, in respect of services rendered by him or her while acting or practising as a foreign lawyer, in a manner and to the extent similar to the indemnity provided to a solicitor under the fund established under section 3 of Cap. 159M.

SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions (South Sudan) Regulation

(L.N. 104)

21. L.N. 104 is made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

22. Determining that the situation in South Sudan continues to constitute a threat to international peace and security in the region, the Security Council of the United Nations adopted Resolution 2206 (2015) on 3 March 2015 to impose certain sanctions against South Sudan.

23. L.N. 104 is made to implement that Resolution by providing for the prohibition against -

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (b) dealing with any funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (c) entry into or transit through HKSAR by certain persons.

24. L.N. 104 will expire at midnight on 2 March 2016.

25. L.N. 104 came into operation on the day of publication in the Gazette, i.e. 29 May 2015. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/5/1) issued by the Commerce and Economic Development Bureau in May 2015 for further information.

26. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) do not apply to regulations made under Cap. 537. Accordingly, L.N. 104 is not required to be tabled at the Legislative Council and is not subject to amendment by the Legislative Council. However, it comes within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee). Members may consider referring L.N. 104 to the Subcommittee for its consideration.

27. As advised by the Clerk to the Subcommittee, the LegCo Brief on L.N. 104 has been circulated to members of the Subcommittee and other Members on 1 June 2015 (LC Paper No. CB(1)916/14-15).

Concluding Observations

28. No difficulties have been identified in relation to the legal or drafting aspect of L.N. 100. The Legal Service Division is still scrutinizing the legal and drafting aspects of other items of subsidiary legislation and will make a further report, if necessary.

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