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**Paper for the House Committee Meeting
on 26 February 2016**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 5 February 2016**

Tabling in LegCo : Council meeting of 17 February 2016

Amendment to be made by : Council meeting of 16 March 2016 (or that of
13 April 2016 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION MADE UNDER THE
INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND
IMMUNITIES) ORDINANCE**

**International Organizations (Privileges and Immunities) (Asia
Pacific Regional Office of the Hague Conference on Private
International Law) Order** **(L.N. 25)**

**International Organizations (Privileges and Immunities)
(Permanent Court of Arbitration) Order** **(L.N. 26)**

Background

Under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558), the Chief Executive in Council (CE in C) may by order in the Gazette, declare that the provisions of an international agreement relating to the status, privileges and immunities of an international organization and of persons connected with such organization, and which are specified in the order, shall have the force of law in Hong Kong.

2. According to paragraphs 2 and 3 of the Legislative Council (LegCo) Brief (without reference number) issued by the Department of Justice on 28 January 2016, the Central People's Government (CPG) entered into a host country agreement with the Hague Conference on Private International Law (HCCH) on 13 December 2012 relating to the establishment of the Asia Pacific Regional Office of the Hague Conference on Private International Law (Regional Office) in the Hong Kong Special

Administrative Region (HKSAR) (HCCH Agreement). On the same day, the HKSAR Government also signed with HCCH a memorandum of administrative arrangements (MAA) to give effect to certain administrative and practical aspects of the HCCH Agreement. According to paragraph 6 of the LegCo Brief, the CPG and the Permanent Court of Arbitration (PCA) signed a host country agreement on the conduct of dispute settlement proceedings in HKSAR on 4 January 2015 (PCA Agreement). The HCCH Agreement and the PCA Agreement confer privileges and immunities on the Regional Office and PCA respectively and their related personnel.

L.N. 25 and L.N. 26

3. L.N. 25 and L.N. 26 are made by CE in C under section 3 of Cap. 558 to declare that certain provisions of the HCCH Agreement, MAA and the PCA Agreement as specified in the respective Schedules to L.N. 25 and L.N. 26 shall have the force of law in Hong Kong. These provisions confer on the Regional Office and PCA and their related personnel in the HKSAR certain privileges and immunities. These include –

- (a) immunity of the Regional Office and PCA from legal process in the HKSAR;
- (b) immunity of the representative and staff of the Regional Office and the related parties of PCA from legal process in the HKSAR in respect of words spoken or writings and acts performed in the their official capacity;
- (c) exception from any measure of compulsory execution in respect of property and assets of the Regional Office and PCA;
- (d) inviolability of the office premises, data, archives and records of the Regional Office and PCA;
- (e) immunity from interference in respect of the official correspondence and communications to and from the Regional Office and PCA; and
- (f) exemption from taxation and customs duties.

4. It is noted that the privileges and immunities accorded to the Regional Office and the PCA and the related personnel are generally in line with those currently accorded to other international organizations establishing their presence and carrying out activities in the HKSAR under Cap. 558.

5. L.N. 25 and L.N. 26 come into operation on 6 April 2016.

6. According to the Clerk to the Panel on Administration of Justice and Legal Services, at its meetings on 22 January 2013 and 26 January 2015, the Panel was informed of the establishment of the Regional Office in the HKSAR in

December 2012 and the Administration's efforts in facilitating the establishment of the PCA respectively. The Panel did not raise any queries. Details of implementation of the privileges and immunities of the Regional Office and PCA and their related personnel as reflected in L.N. 25 and L.N. 26 had not been submitted to the Panel for consideration.

PART II SUBSIDIARY LEGISLATION MADE UNDER THE SECURITIES AND FUTURES ORDINANCE

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| Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 | (L.N. 27) |
| Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules | (L.N. 28) |
| Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (Commencement) Notice | (L.N. 29) |
| Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) (Amendment) Rules 2016 | (L.N. 30) |
| Securities and Futures (OTC Derivative Transactions Reporting Obligations – Fees) Rules | (L.N. 31) |
| Securities and Futures (Fees) (Amendment) Rules 2016 | (L.N. 32) |

Background

7. The Securities and Futures (Amendment) Bill 2014 was passed by the LegCo on 26 March 2014, and gazetted as the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) (SFAO) on 4 April 2014. The main object of SFAO is to establish a statutory framework for the regulation of over-the-counter (OTC) derivative products. The framework introduces mandatory reporting, clearing and trading obligations of OTC derivative transactions. According to paragraphs 1 and 3 of the LegCo Brief (File Ref: SF&C/1/2/11/6C) issued by the Hong Kong Monetary Authority (MA), the Securities and Futures Commission (SFC), and the Financial Services and the Treasury Bureau on 3 February 2016, the new framework is to be implemented in stages. As the first stage of implementation, the provisions relating to the general framework of the new regulatory regime and the mandatory reporting and the related record keeping obligations came into operation on 10 July 2015. Pursuant to these provisions, two items of subsidiary legislation, namely, the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015) and the Securities and Futures (Stock

Markets, Futures Markets and Clearing Houses) Notice (L.N. 97 of 2015) were gazetted on 15 May 2015. Except for rule 15 of L.N. 96 of 2015, both L.N. 96 and L.N. 97 came into operation on 10 July 2015.

L.N. 27 to L.N. 32

8. L.N. 27 to L.N. 32 implement the second stage of the OTC derivatives regulatory regime by introducing mandatory clearing and its related record keeping obligations and expanding the existing mandatory reporting obligations.

L.N. 27

9. By L.N. 27, the Secretary for Financial Services and the Treasury appoints 1 September 2016 as the day on which the provisions (including the new sections 101C, 101J, 101N and 101Q) relating to the mandatory clearing and related record keeping obligations¹ under the OTC derivatives regulatory regime come into operation (details of such obligations are set out in L.N. 28 of 2016 reported below).

10. The remaining provisions which have not come into operation (the uncommenced provisions) include those relating to the new and expanded scope of regulated activities in relation to OTC derivative products, trading obligations imposed on prescribed persons, regulation of systematically important participants, provision of trading services by automated trading services (ATS) and transitional provisions. In response to our enquiries, the Administration has explained that the uncommenced provisions will be implemented in later stages in view of the complexity of the regulatory framework. The implementation of amendments relating to the electronic filing of certain notifications and reports is scheduled for 2017 pending the building of the necessary system.

L.N. 28

11. L.N. 28 is made by SFC under sections 101N, 101P and 101Q of the Securities and Futures Ordinance (Cap. 571) with the consent of MA and after consultation with the Financial Secretary (FS). Its main object is to specify the following matters for the purposes of the clearing and record keeping obligations imposed on prescribed persons relating to specified OTC derivative transactions –

- (a) the transactions (relating to basis swaps, fixed-to-floating swaps and overnight index swaps²) that are subject to the obligations;

¹ Clearing obligation refers to the obligation to clear specified OTC derivatives transactions with a designated central counterparty imposed on prescribed persons (licensed corporations, authorized financial institutions, approved money brokers and others) by section 101C of Cap. 571. The record keeping obligation refers to the obligation to keep records relating to specified OTC derivative transactions imposed on prescribed persons by section 101E of Cap. 571.

² See rules 4 and 5 of and Schedule 1 to L.N. 28 of 2016.

- (b) the circumstances relating to the transactions in which the obligations apply to prescribed persons;³ and
- (c) the circumstances in which SFC may designate persons as CCPs under section 101J of Cap. 571 (which must either be a recognized clearing house or an authorized provider of ATS) and the procedural requirements relating to the designations.

12. L.N. 28 comes into operation on 1 September 2016.

L.N. 29 and L.N. 30

13. By L.N. 29, SFC appoints 1 September 2016 as the date on which rule 15 of L.N. 96 of 2015 comes into operation.

14. Rule 15 of L.N. 96 of 2015 provides that a prescribed person that is an automated trading services-central counterparty (ATS-CCP) must report a specified OTC derivative transaction to MA if the person is a counterparty to the transaction and the other counterparty to the transaction is a company. On the commencement of rule 15 with effect from 1 September 2016, ATS-CCPs will become subject to the mandatory reporting and the related record keeping obligations as from the same date.

15. The main object of L.N. 30 is to amend L.N. 96 of 2015 by –

- (a) expanding the scope of OTC derivative transactions to which the reporting and record keeping obligations apply to cover all OTC derivative products (and not only specific types of interest rate swaps and non-deliverable forwards), except transactions in excluded currency contracts;
- (b) expanding the scope of transaction information to be reported to include such information as daily valuation of the transaction, information required for MA's administration of reporting transaction and information as to whether the transaction arises from portfolio compression exercise;
- (c) providing for the transitional arrangements relating to transactions already reported to MA; and
- (d) extending the "exempt person" relief to cover the whole spectrum of OTC derivative products following the extension of the reporting obligations to cover all OTC derivative products.

16. L.N. 30 comes into operation on 1 July 2017.

³ See rule 6 under Part 2 of L.N. 28 of 2016.

L.N. 31

17. L.N. 31 is made by CE in C under section 101M of Cap. 571 after consultation with MA. It requires and provides for the payment to MA of a fee (at \$4.5 per specified transaction) for using the electronic system operated by or on behalf of MA for submitting and receiving reports on certain OTC derivative transactions under the regulatory regime. The fee must be paid within seven business days from the date on which the demand note is issued by MA. MA may recover the outstanding fee as a civil debt due to MA. L.N. 31 further provides that MA may waive, reduce, or refund the fee, if MA is of the opinion that the charging of the fee is inappropriate or unduly burdensome for a person or class of persons.

18. According to paragraph 28 of the LegCo Brief, the fee is set at \$4.5 per transaction with a view to achieving full recovery of the recurring costs.

19. L.N. 31 comes into operation on 1 May 2016.

L.N. 32

20. The new section 101J(1) of Cap. 571, as added by SFAO, provides that on application by a person in the prescribed manner and on payment of the prescribed fee, SFC may, with the consent of MA and after consultation with FS, designate the person as a CCP.

21. L.N. 32 is made by CE in C under section 395 of Cap. 571 after consultation with SFC. It amends Schedules 1 and 3 to the Securities and Futures (Fees) Rules (Cap. 571AF) to prescribe –

- (a) an annual fee of \$10,000 payable in respect of designation of a person as a CCP under the new section 101J(1)(a); and
- (b) a fee of \$10,000 payable on an application for designation as a CCP under the new section 101J(1) of Cap. 571.

22. L.N. 32 comes into operation on the day on which the new section 101J of Cap. 571 comes into operation, i.e. 1 September 2016.

Public Consultation

23. According to paragraph 38 of the LegCo Brief, MA and SFC conducted a joint public consultation in 2014 on the implementation of the reporting obligation, including the fees payable to MA under L.N. 31. Further, in 2015, MA and SFC conducted a joint public consultation on the implementation of the second stage of the OTC derivatives regulatory regime, including the CCP fees. No objection to the fee proposals was raised. According to the Administration, respondents generally

supported other proposals, which have been modified in light of the feedback received.

Consultation with LegCo Panel

24. According to the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on the proposed implementation of the second stage of the OTC derivatives regulatory regime in Hong Kong at the meeting on 2 November 2015. While the Panel did not raise objection to the proposals, some members enquired about the scope of phase one clearing obligations and the timetable for review of the new requirements.

PART III SUBSIDIARY LEGISLATION MADE UNDER THE PREVENTION AND CONTROL OF DISEASE ORDINANCE

Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2016

(L.N. 33)

25. The Prevention and Control of Disease Ordinance (Cap. 599) and its subsidiary legislation provide a statutory framework for the control and prevention of diseases that pose public health risks in Hong Kong. Section 15 of Cap. 599 provides that the Director of Health (Director) may by notice published in the Gazette amend Schedule 1 (which specifies a list of infectious diseases) to Cap. 599. Under section 4(1) of the Prevention and Control of Disease Regulation (Cap. 599A), a medical practitioner is required to notify the Director immediately if he has reason to suspect the existence of a case of a scheduled infectious disease. Failure to comply with the requirement or knowingly giving the Director any information that is false in a material particular is an offence under section 4(4) of Cap. 599A punishable upon conviction with a fine at level 2 (i.e. \$5,000).

26. L.N. 33 is made by the Director under section 15 of Cap. 599 to amend Schedule 1 to Cap. 599 by adding "Zika Virus Infection" to the list of scheduled infectious diseases. The effect of this is that Zika Virus Infection will be subject to the control of Cap. 599 and its subsidiary legislation.

27. L.N. 33 came into operation on the day it was published in the Gazette i.e. 5 February 2016.

28. According to the Clerk to the Panel on Health Services, while the Panel has not been consulted on L.N. 33, members discussed the measures for the prevention and control of Zika Virus Infection at the meeting on 15 February 2016. During the discussion, some members enquired on the diagnostic techniques for Zika Virus Infection to facilitate early identification and notification of confirmed cases.

Concluding Observations

29. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 27 to L.N. 32, and a further report will be made if necessary. No difficulties have been identified in the legal and drafting aspects of L.N. 25, L.N. 26 and L.N. 33.

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