

立法會
Legislative Council

LC Paper No. LS41/15-16

**Paper for the House Committee Meeting
on 11 March 2016**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 26 February 2016**

Tabling in LegCo : Council meeting of 2 March 2016

Amendment to be made by : Council meeting of 16 March 2016 (or that of 20 April 2016 if extended by resolution)

Fugitive Offenders (Netherlands) (Amendment) Order 2016 (L.N. 38)

Background

The Fugitive Offenders (Netherlands) Order (Cap. 503A) was made under section 3 of the Fugitive Offenders Ordinance (Cap. 503) to bring into force the Agreement between the Government of the Kingdom of the Netherlands and the Government of Hong Kong for the Surrender of Fugitive Offenders signed on 2 November 1992 (the Agreement). Article 17 of the Agreement provides that with respect to the Kingdom of the Netherlands¹, the Agreement shall apply to the part of the Kingdom in Europe only. By Cap. 503A, it is directed that the procedures in Cap. 503 for the surrender of fugitive offenders shall apply between Hong Kong and the Netherlands.

2. By a protocol entered into by the Government of the Hong Kong Special Administrative Region and the Government of the Kingdom of the Netherlands and signed on 17 February 2015 (the Protocol), the Agreement was amended to extend the application of the Agreement to the Caribbean part of the Netherlands.

L.N. 38

3. L.N. 38 is made by the Chief Executive in Council under section 3 of Cap. 503 to amend Cap. 503A in order to implement in Hong Kong the Protocol

¹ According to paragraph 6 of the LegCo Brief (with no file reference) issued by Security Bureau dated 24 February 2016, when the Agreement was signed in 1992, the Kingdom of the Netherlands consisted of three parts: the mainland in Europe (the Netherlands), a group of five islands in the Caribbean (the Netherlands Antilles) and another island in the Caribbean (Aruba).

so that with respect to the Kingdom of the Netherlands the Agreement shall apply to the European part of the Netherlands and to the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba). L.N. 38 adds a Schedule 2 to Cap. 503A in order to set out the terms of the Protocol (section 5) and makes consequential amendments to reflect the addition of Schedule 2 and to add a note that provides more information about the Agreement (sections 3 and 4)².

4. L.N. 38 is subject to a mechanism of scrutiny by the Legislative Council (LegCo) provided in section 3(2) to (6) of Cap. 503. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) except that section 3(3) of Cap. 503 restricts LegCo's power to only repeal the Order.

5. L.N. 38 comes into operation on 21 May 2016.

6. According to the Clerk to the Panel on Security, the Panel has not been consulted on the amendments to Cap. 503A. According to paragraph 19 of LegCo Brief (with no file reference) issued by Security Bureau on 24 February 2016, the legislative exercise is straightforward and, as with similar exercise in the past, public consultation is considered unnecessary.

**Securities and Futures (Short Position Reporting)
(Amendment) Rules 2016**

(L.N. 39)

7. L.N. 39 is made by the Securities and Futures Commission (SFC) under section 397(1) and (2) of the Securities and Futures Ordinance (Cap. 571) after consultation with the Financial Secretary. It amends the Securities and Futures (Short Position Reporting) Rules (Cap. 571AJ) to -

- (a) expand the scope of the short position reporting regime so that the duty to report on short positions is to apply to shares and interests in collective investment schemes determined by the Stock Exchange Company to be a "designated security" in accordance with the rules of the Stock Exchange Company (specified shares);
- (b) provide for separate thresholds for reporting short positions in relation to collective investment schemes;
- (c) provide for the calculation of the net short position value in the specified shares where the closing price is expressed in a currency other than Hong Kong dollars;

² The note specifies that the Agreement was done in the Chinese, English and Dutch languages, each text being equally authentic; and the Dutch text of the Agreement is available for inspection at the Security Bureau of the Hong Kong Government.

- (d) provide that SFC may designate one or more electronic systems for reporting; and
- (e) add a requirement that the daily reporting requirement notice must identify the specified shares to which the notice relates.

8. L.N. 39 comes into operation on 15 March 2017.

9. According to paragraph 14 of the LegCo Brief (with no file reference) issued by SFC on 24 February 2016, SFC conducted a public consultation on expanding the scope of short position reporting and on the draft amendments to Cap. 571AJ in November 2015. A majority of the financial institutions and professional associations that responded to the consultation supported the proposal while there were individual commentators who raised objection and proposed to do away with Cap. 571AJ or to raise the reporting threshold. After considering all the comments from the market, SFC concludes that the amendments in L.N. 39 are appropriate for the Hong Kong market.

10. According to the Clerk to the Panel on Financial Affairs, the Panel was briefed on the proposed expansion of the scope of the short position reporting regime at the meeting on 15 February 2016. While the Panel did not raise objection to the proposal, some members enquired about the mutual assistance between the Hong Kong and Mainland regulators in regulating short selling activities in both markets.

Concluding Observations

11. No difficulties have been identified in the legal and drafting aspects of L.N. 38 and L.N. 39.

Prepared by

Rachel DAI
Assistant Legal Adviser
Legislative Council Secretariat
9 March 2016