

立法會
Legislative Council

LC Paper No. LS52/15-16

**Paper for the House Committee Meeting
on 13 May 2016**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 6 May 2016**

Tabling in LegCo : Council meeting of 11 May 2016

Amendment to be made by : Council meeting of 8 June 2016 (or that of 29 June 2016 if extended by resolution)

**International Organizations (Privileges and Immunities)
(Asian Infrastructure Investment Bank) Order** (L.N. 52)

**Securities and Futures Ordinance (Amendment of
Schedule 1) Notice 2016** (L.N. 59)

On 29 June 2015, the Government of the People's Republic of China signed the Articles of Agreement ("Agreement") of the Asian Infrastructure Investment Bank ("AIIB") which was ratified on 4 November 2015. L.N. 52 is made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) to declare that certain provisions of the Agreement as specified in the Schedule to L.N. 52 have the force of law in Hong Kong. These articles concern the status of, and the privileges, immunities and exemptions enjoyed by, AIIB and its officers and employees (including experts and consultants). Such privileges and immunities include immunity from judicial proceedings if certain conditions are satisfied, privilege for communications as well as exemption from taxation.

2. L.N. 59 is made by the Securities and Futures Commission ("SFC") under section 2(3) of the Securities and Futures Ordinance (Cap. 571) to add AIIB to Part 4 of Schedule 1 to Cap. 571. The effect is that AIIB becomes a multilateral agency and is classified as a professional investor under Cap. 571.

3. Members may refer to the Legislative Council ("LegCo") Brief (with no file reference) issued by the Financial Services and the Treasury Bureau and SFC dated 4 May 2016 for further information.

4. As advised by the Clerk to the Panel on Financial Affairs, on 22 March 2016, the Administration provided an information paper (LC Paper No. CB(1)717/15-16(01)) to the Panel on its plan to table L.N. 52 before LegCo for negative vetting in the second quarter of 2016. The Panel has not discussed L.N. 52 and L.N. 59.

5. L.N. 52 and L.N. 59 come into operation on 11 July 2016.

Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) (Amendment) Regulation 2016 (L.N. 53)

Merchant Shipping (Safety) (Carriage of Cargoes) (Amendment) Regulation 2016 (L.N. 54)

Merchant Shipping (Safety) (IMSBC Code) Regulation (L.N. 55)

Merchant Shipping (Safety) (High Speed Craft) (Amendment) Regulation 2016 (L.N. 56)

6. L.N. 53 to L.N. 56 are made by the Secretary for Transport and Housing under various sections of the Merchant Shipping (Safety) Ordinance (Cap. 369) to implement the latest amendments to the Convention on the International Regulations for Preventing Collisions at Sea 1972 ("COLREGs") and the International Convention for the Safety of Life at Sea 1974 ("SOLAS") adopted by the International Maritime Organization ("IMO"). In gist:

- (a) L.N. 53 amends the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N) to give effect to the amendments to COLREGs. The amendments include extending the application of Cap. 369N to Wing-In-Ground crafts and providing for matters relating to navigational lights, sound signals and distress signals;
- (b) L.N. 54 amends the Merchant Shipping (Safety) (Carriage of Cargoes) Regulation (Cap. 369AV) to give effect to the amendments to SOLAS. It renames Cap. 369AV as the Merchant Shipping (Safety) (Carriage of Cargoes and Oil Fuel) Regulation and extends its application to a ship carrying oil fuel. It also updates the provisions relating to the loading, stowage, carriage and unloading of cargoes (including solid bulk cargoes and grain).

L.N. 54 also implements the new requirements that the gross mass of cargoes and containers must be verified by (i) weighing the packed container as a whole, or (ii) adding the tare mass of the container and the mass of all the cargoes and packages to be packed into the container;

- (c) L.N. 55 is a new regulation which implements the requirements under SOLAS and gives effect to the relevant provisions of the International Maritime Solid Bulk Cargoes Code ("IMSBC Code") relating to the loading, stowage, carriage and unloading of certain types of solid bulk cargoes (other than grain), including dangerous goods in solid form in bulk; and
- (d) L.N. 56 amends the Merchant Shipping (Safety) (High Speed Craft) Regulation (Cap. 369AW) to provide for the requirements concerning the construction, operation, equipment maintenance and safety measures in respect of high speed crafts. The amendments are made to reflect the latest requirements relating to the International Code of Safety for High Speed Craft adopted by the Maritime Safety Committee of IMO.

7. It is noted that L.N. 53 to L.N. 56 have adopted an approach of making direct reference to the provisions of COLREGs, SOLAS and the relevant international codes pursuant to section 112B of Cap. 369. According to paragraph 7 of the LegCo Brief (File Ref: THB PML CR 8/10/80/2) issued by the Transport and Housing Bureau in May 2016, this approach is adopted to keep the local legislation in tandem with the technical details of IMO's new requirements¹.

8. According to paragraph 17 of the LegCo Brief, the Administration has consulted various stakeholders in the shipping industry on the amendments. Some Port Operation Committee members were concerned about the implementation arrangements of the new requirements on verification of gross mass of cargoes ("VGM") under the amended Cap. 369AV. Members may refer to paragraph 15 of the LegCo Brief for details of the measures taken or to be taken by the Administration to address the industry's concerns.

9. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on the Administration's proposals to incorporate the latest requirements under COLREGs and SOLAS into local legislation on 27 July 2015 and 19 April 2016 respectively. Members were generally

¹ Members may refer to paragraph 18 of LC Paper No. CB(1)69/13-14 for a list of factors that the Administration would take into account in deciding whether to adopt the direct reference approach.

supportive of the proposals and urged for their early implementation. At the meeting on 19 April 2016, a member expressed concern about the readiness of the trade to comply with the requirement under SOLAS on VGM. The Administration advised that briefings and trial-run would be arranged with various stakeholders to ensure smooth implementation.

10. L.N. 53, L.N. 54 and L.N. 56 come into operation on 1 July 2016. As for L.N. 55, save for sections 6(1) and 7(2)(b) and (7)² which will come into operation on 1 January 2017, the other provisions come into operation on 1 July 2016. Upon enquiries of the Legal Service Division, the Administration explained that the commencement arrangement for L.N. 55 is made because the provisions of the IMSBC Code which are implemented by the above sections of L.N. 55 would only come into operation on 1 January 2017.

**Telecommunications (Carrier Licences) (Amendment)
Regulation 2016 (L.N. 57)**

11. L.N. 57 is made by the Secretary for Commerce and Economic Development ("SCED") under section 7(2) of the Telecommunications Ordinance (Cap. 106) to repeal General Condition 10 in Schedule 1 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V).

12. Section 7(2) of Cap. 106 provides that SCED may by regulations prescribe the general conditions for a carrier licence (other than an exclusive licence) which is issued under Cap. 106. Such conditions are specified in Schedule 1 to Cap. 106V. General Condition 10 of Schedule 1 provides that no part of the network concerned shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

13. According to paragraph 4 of the LegCo Brief (File Ref: CCIB/B 480-10-1-1-6/5(15)C1) issued by the Communications and Creative Industries Branch of the Commerce and Economic Development Bureau in May 2016, the repeal of General Condition 10 is necessary as it duplicates with or has been superseded by certain cross-sectoral legislation or regulation.

14. According to paragraphs 11 and 12 of the LegCo Brief, a public consultation exercise was conducted in 2014 in accordance with section 7(3) of

² These sections concern the requirements relating to the safety of personnel and ship and the requirement to provide the Bulk Cargo Shipping Name of the cargoes specified in the IMSBC Code.

Cap. 106³. All except one of the 11 submissions received supported the removal of General Condition 10.

15. As advised by the Clerk to the Panel on Information Technology and Broadcasting, at the Panel's meeting on 9 November 2015, members were consulted on the legislative proposal and they raised no objection to the proposal. One member enquired whether the criteria used for identifying the conditions in a carrier licence that should be removed due to their being duplicated with (or superseded by) other cross-sectoral legislation or regulation would be incorporated into Cap. 106. The Administration stated that it did not intend to incorporate the criteria into Cap. 106.

16. L.N. 57 comes into operation on 1 July 2016.

Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2016 (L.N. 58)

17. L.N. 58 is made by the Chief Executive under section 50(1) of the Dangerous Drugs Ordinance (Cap. 134) after consultation with the Executive Council to add two substances, namely, Tapentadol and 3,4-Dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (commonly known as AH-7921), to Part I of the First Schedule to Cap. 134 so that these substances would be subject to control under Cap. 134.

18. Under Cap. 134, substances included in Part I of the First Schedule are dangerous drugs and are subject to the control of a licensing scheme administered by the Department of Health. Illicit trafficking and manufacturing of any of these substances will be subject to a maximum penalty of life imprisonment and a fine of \$5 million. Possession, consumption and supply of the substances would also constitute criminal offences.

19. According to paragraphs 15 and 16 of the LegCo Brief (File Ref: NCR 2/1/8 S/F(14)) issued by the Narcotics Division of the Security Bureau in May 2016, the Administration has consulted the relevant trades, as well as licensees under Cap. 134 and the Pharmacy and Poisons Ordinance (Cap. 138). The Administration has also consulted the Action Committee Against Narcotics on 17 December 2015. No objection to the proposal was raised.

³ According to section 7(3) of Cap. 106, before making a regulation under subsection (2), SCED shall by notice in the Gazette invite members of the public who are interested to make representations by a date not less than 21 days after the notice is published and as specified in the notice, and consider the representations received by the date.

20. As advised by the Clerk to the Panel on Security, the Panel was briefed on the legislative proposal at its meeting on 1 March 2016. While raising no objection to the proposal, some members enquired about the regulation of Tapentadol and AH-7921 before and after the legislative amendments come into force.

21. L.N. 58 comes into operation on 8 July 2016.

Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 (L.N. 60)

22. Under sections 14 to 16 of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N), construction waste delivered to landfills, refuse transfer stations, sorting facilities and public fill reception facilities (which are specified in Part 1 of Schedules 1 to 4 to Cap. 354N) for disposal are subject to certain charges specified in Part 2 of the respective Schedules. These charges are calculated on the basis of the weight of each load of construction waste. There is also a charge where the Director of Environmental Protection considers that ascertainment of the weight of a load of waste is impracticable or will cause public health problems ("Director's Charge").

23. L.N. 60 is made by the Secretary for the Environment under section 23 of Cap. 354N to amend Part 2 of Schedules 1 to 4 to Cap. 354N to increase the above charges as follows:

Charge	Existing charge	New charge under L.N. 60
Landfill charge for a load of construction waste delivered to a landfill weighing 1 tonne or less or the Director's Charge under Schedule 1	\$125	\$200
Landfill charge for a load of construction waste delivered to a refuse transfer station weighing 0.1 tonne or less or the Director's Charge under Schedule 2	\$12.5	\$20

Charge	Existing charge	New charge under L.N. 60
Landfill charge for a load of construction waste delivered to a landfill weighing more than 1 tonne or for a load of construction waste delivered to a refuse transfer station weighing more than 0.1 tonne under Schedules 1 and 2 respectively	\$12.5 per 0.1 tonne	\$20 per 0.1 tonne
Sorting charge for a load of construction waste weighing 1 tonne or less or the Director's Charge under Schedule 3	\$100	\$175
Sorting charge for a load of construction waste weighing more than 1 tonne under Schedule 3	\$10 per 0.1 tonne	\$17.5 per 0.1 tonne
Public fill charge for a load of construction waste weighing 1 tonne or less or the Director's Charge under Schedule 4	\$27	\$71
Public fill charge for a load of construction waste weighing more than 1 tonne under Schedule 4	\$2.7 per 0.1 tonne	\$7.1 per 0.1 tonne
Public fill charge for each load of construction waste delivered by an approved vessel under Schedule 4	\$2.7 for every 0.1 tonne of the maximum load of the vessel	\$7.1 for every 0.1 tonne of the maximum load of the vessel

24. The above charges have not been adjusted since their introduction in 2006. According to paragraphs 5 and 6 of the LegCo Brief (File Ref: EP CR 9/65/7) issued by the Environment Bureau and the Environmental Protection Department dated 4 May 2016, the Administration considers it necessary to review the charges having regard to the established fees, charges policy and the "polluter pays" principle. The charges imposed on waste delivered to landfills and public fills are increased to achieve full cost recovery whereas the increase in charges imposed on waste delivered to sorting facilities only attains a 66% cost-recovery rate. According to the Administration, the difference of \$25 per

tonne between the sorting charge and the landfill charge is maintained in order to promote the use of sorting facilities.

25. According to paragraphs 17 and 18 of the LegCo Brief, between October 2015 and April 2016, the Administration received views relating to the legislative proposal which were deliberated at various sessions organized by various bodies (including the Construction Industry Council and the Hong Kong Green Building Council) and at a meeting of the Waste Management Subcommittee of the Advisory Council on the Environment. According to the Administration, the legislative proposal received support from the trade.

26. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 21 December 2015 on the Administration's proposal to increase the above charges. Members discussed the levels and cost recovery rates of the disposal charges and the measures to promote reduction of construction waste. The proposal was put to vote at the meeting and was supported by a majority of members present at the meeting.

27. L.N. 60 comes into operation on 7 April 2017. According to paragraph 7 of the LegCo Brief, the commencement arrangement is made to allow a reasonably substantial period before the implementation of L.N. 60 for stakeholders to re-negotiate their contracts, if necessary.

Concluding Observations

28. The Legal Service Division is still scrutinizing L.N. 53 to L.N. 56 and a further report will be made if necessary. No difficulties have been identified in the legal and drafting aspects of L.N. 52 and L.N. 57 to L.N. 60.

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