

**立法會**  
**Legislative Council**

LC Paper No. LS12/16-17

**Paper for the House Committee Meeting  
on 2 December 2016**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 25 November 2016**

**Tabling in LegCo** : Council meeting of 30 November 2016

**Amendment to be made by** : Council meeting of 14 December 2016 (or that of 18 January 2017 if extended by resolution)

**Pharmacy and Poisons (Amendment) (No. 5) Regulation (L.N. 172)  
2016**

L.N. 172 is made by the Pharmacy and Poisons Board ("PPB") under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health ("SFH"). It amends the Pharmacy and Poisons Regulations (Cap. 138A) by:

- (a) adding six substances to, and substituting an existing substance<sup>1</sup> in, Division A of Schedule 1 and Division A of Schedule 3 to Cap. 138A so that those substances are subject to restrictions concerning their sale, supply, labelling and storage, and can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon; and
- (b) adding six substances to Division A of Part 1 of the Poisons List set out in Schedule 10 to Cap. 138A so that poisons containing those substances can only be sold 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.

---

<sup>1</sup> Upon enquiry with the Administration, we are given to understand that "Pantoprazole; its salts" are subject to the restrictions referred to in paragraph 1(a) above except when contained in packs of no more than 7 days' supply (20mg or less per day) of oral preparations for relief of heartburn/acid reflux symptoms in adult patients. Poisons containing Pantoprazole (irrespective of dosage, use, target patients or packaging) are also subject to the restrictions referred to in paragraph 1(b) above.

2. According to paragraph 5 of the Legislative Council ("LegCo") Brief (File Ref.: FHB/H/23/4) issued by the Food and Health Bureau in November 2016, PPB considers the amendments appropriate in view of the potency, toxicity and potential side effects of the above substances. Members may refer to Annex B to the LegCo Brief for more details about the substances.

3. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 172.

4. L.N. 172 came into operation on the day of publication in the Gazette, i.e. 25 November 2016.

**Solicitors (Professional Indemnity) (Amendment) Rules 2016 (L.N. 173)**

**Solicitors' Practice (Amendment) Rules 2016 (L.N. 174)**

L.N. 173

5. L.N. 173 is made by the Council ("Council") of The Law Society of Hong Kong ("Society") under sections 73 and 73A<sup>2</sup> of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. It mainly amends the Solicitors (Professional Indemnity) Rules (Cap. 159M) by:

- (a) expanding the Hong Kong Solicitors Indemnity Fund ("Fund") to cover a solicitor acting as the neutral in any form of alternative dispute resolution ("ADR") procedure, as a China-Appointed Attesting Officer ("CAAO"), or as a civil celebrant of marriages appointed under the Marriage Ordinance (Cap. 181) (rule 3(6));
- (b) clarifying that arbitration under rule 13 of, and determination by counsel under paragraph 8(1)(c) of Schedule 3 to, Cap. 159M are separate procedures for resolving disputes between the company managing the Fund<sup>3</sup> ("Company") and the indemnified (rule 5(1));
- (c) empowering the Company to appoint a law firm which is not on the panel appointed by the Council to act for an indemnified (rule 6) or to advise the Company on its obligations (rule 3(3));<sup>4</sup>

---

<sup>2</sup> Under section 73A, the Council may make rules concerning indemnity against loss arising from claims in respect of any description of civil liability incurred by a solicitor or former solicitor in connection with his practice. For the purpose of providing such indemnity, the Society may establish and maintain a fund and require solicitors to contribute to the fund.

<sup>3</sup> Hong Kong Solicitors Indemnity Fund Limited.

<sup>4</sup> According to paragraph D(d) of the LegCo Brief issued by the Society on 17 November 2016, it may be necessary to appoint a firm outside the panel where the panel lacks expertise in a particular area of law or when all panel firms might be conflicted in a claim.

- (d) providing for the payment of interest on any overdue contributions (for which each principal of the indemnified firm is jointly and severally liable) at the same rate as allowed for a judgment debt under section 49 of the High Court Ordinance (Cap. 4) (rule 7);
- (e) removing the exclusion under paragraph 1(2)(c)(x) of Schedule 3 to Cap. 159M so that indemnity may be provided for a claim which arises from circumstances occurring when a receipt for the initial contribution due has not been issued to the indemnified firm for failure to comply with any provision of Cap. 159M (rule 9(6)); and
- (f) requiring the referral of any dispute between the indemnified and the Company relating to the conduct of a claim to a junior or senior counsel for determination (rule 9(13) and (14)).

6. Members may refer to the LegCo Brief (no reference provided) prepared by the Society on 17 November 2016 for details of other technical amendments made by L.N. 173 to update Cap. 159M.

#### L.N. 174

7. L.N. 174 is made by the Council under section 73 of Cap. 159 with the prior approval of the Chief Justice. It corrects the Chinese rendition of CAAO in rule 2B(3)(d)(iii)<sup>5</sup> of the Solicitors' Practice Rules (Cap. 159H) from "中國委任的見證人員" to "中國委托公證人".

8. According to paragraphs D and F of the LegCo Brief, the above amendments were proposed by various committees<sup>6</sup> of the Society and the Board of the Company over the years and approved by the Board and the Council.

9. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 173 or L.N. 174.

10. L.N. 173 and L.N. 174 come into operation on the same day to be appointed by the President of the Society by notice published in the Gazette.

---

<sup>5</sup> Rule 2B governs the information appearing on a law firm's letterhead.

<sup>6</sup> Professional Indemnity Advisory, Civil Litigation, Personal Injuries & ADR Committees.

**Dutiable Commodities (Amendment) Regulation 2014  
(Commencement) Notice**

**(L.N. 175)**

11. L.N. 175 is made by the Secretary for Financial Services and the Treasury under section 1 of the Dutiable Commodities (Amendment) Regulation 2014 (L.N. 31 of 2014) to appoint 27 January 2017 as the day on which L.N. 31 of 2014 comes into operation.

12. Published in the Gazette on 21 March 2014, L.N. 31 of 2014 amends the Dutiable Commodities Regulations (Cap. 109A) to introduce an electronic system for processing applications for licences for the import, export, manufacture or storage of alcoholic liquors, tobacco, hydrocarbon oil and methyl alcohol. The commencement date of 27 January 2017 is consistent with the target implementation date mentioned in the LegCo Brief (File Ref: TsyB R 183/700-6/6/0 (C)) issued in respect of L.N. 31 of 2014 on 19 March 2014. Upon our enquiry, the Administration has confirmed that it has taken almost three years to develop, and obtain necessary funding for, the electronic system. Upon commencement, there will be a six-month transitional period during which applications for licences may continue to be made in paper form.

13. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 175.

**Public Health (Animals and Birds) (Animal Traders)  
(Amendment) Regulation 2016 (Commencement) Notice**

**(L.N. 176)**

14. L.N. 176 is made by SFH under section 1 of the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 (L.N. 64 of 2016) to appoint 20 March 2017 as the day on which L.N. 64 of 2016 comes into operation.

15. L.N. 64 of 2016 amends the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) in order to strengthen the regulation of animal trading and dog breeding activities through licensing arrangements. L.N. 64 of 2016 was gazetted on 20 May 2016 and considered by a subcommittee formed by the Fifth LegCo to study the subsidiary legislation. As advised by the Clerk to the subcommittee, while the subcommittee did not explicitly discuss the commencement of L.N. 64 of 2016, some members expressed concern that L.N. 64 of 2016 might produce an unintended effect of legalizing private breeding of dogs.<sup>7</sup> Members may refer to the subcommittee's report dated 23 June 2016 (LC Paper No. CB(2)1804/15-16) for further details.

---

<sup>7</sup> A Member's proposed resolutions to repeal and/or amend L.N. 64 of 2016 were put on the Agenda of the Council meeting of 13 July 2016 but were not reached before the Fifth LegCo stood prorogued.

16. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel has not been consulted on L.N. 176.

17. No LegCo Brief has been issued on L.N. 175 or L.N. 176.

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

**United Nations Sanctions (Iran) Regulation (Repeal) (L.N. 177)**  
**Regulation**

**United Nations Sanctions (Joint Comprehensive Plan of Action – Iran) Regulation (L.N. 178)**

18. Since 2006, the United Nations Security Council ("UNSC") has made several resolutions imposing a range of sanctions against Iran, including prohibition against the supply, sale, transfer and carriage of certain nuclear-related items, materials, equipment, goods or technology to Iran, and prohibition against the procurement of certain nuclear-related items, materials, equipment, goods or technology, arms or related materiel from Iran. These sanctions were given effect by the United Nations Sanctions (Iran) Regulation (Cap. 537AF).

19. L.N. 177 and L.N. 178 are 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. L.N. 177 repeals Cap. 537AF to implement UNSC's decision to terminate various previous resolutions referred to in paragraph 7(a) of Resolution 2231 (2015) as adopted by UNSC on 20 July 2015 ("Resolution 2231").<sup>8</sup> L.N. 178 gives effect to certain decisions in paragraph 7(b) of and Annex B to Resolution 2231 by prohibiting:

- (a) the supply, sale, transfer or carriage of conventional arms, nuclear-related items or ballistic missile-related items to Iran (sections 2 and 3);
- (b) the supply, sale, transfer or carriage of arms or related materiel or ballistic missile-related items from Iran (sections 4 and 5);
- (c) the provision of certain training, services or assistance related to conventional arms (section 6);

---

<sup>8</sup> Resolution 2231 endorses the Joint Comprehensive Plan of Action concluded on 14 July 2015 being a comprehensive, long-term and proper solution to the Iranian nuclear issue.

- (d) the provision or transfer of certain assistance, training, services or resources related to nuclear-related items or ballistic missiles (sections 7 and 8);
- (e) making available, or dealing with, financial assets or economic resources involving certain persons or entities (sections 9 and 39);
- (f) the sale and acquisition of interest in commercial activities related to ballistic missiles, uranium or nuclear materials (section 10); and
- (g) entry or transit by certain persons (section 11).

20. L.N. 178 also deals with the granting of licences for the activities referred to in paragraph 19(a) to (f) above, enforcement, evidence, disclosure of information and miscellaneous matters. Members may refer to Annex E to the LegCo Brief (File Ref: CITB CR 67/53/1) issued by the Commerce and Economic Development Bureau in November 2016 for a marked-up version of L.N. 178 showing changes when compared against the repealed Cap. 537AF.

21. L.N. 177 and L.N. 178 came into operation on the day of publication in the Gazette, i.e. 25 November 2016.

22. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under Cap. 537. Therefore, L.N. 177 and L.N. 178 are not required to be tabled in LegCo and are not subject to amendment by LegCo. However, since they come 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 ("Subcommittee"), Members may consider referring them to the Subcommittee for its consideration. As advised by the Clerk to the Subcommittee, the LegCo Brief on L.N. 177 and L.N. 178 was circulated to members of the Subcommittee vide LC Paper No. CB(1)195/16-17 on 28 November 2016.

### **Concluding Observations**

23. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

LOO Chi-pong, Bonny  
Assistant Legal Adviser  
Legislative Council Secretariat  
29 November 2016