

**立法會**  
**Legislative Council**

LC Paper No. LS82/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 6 July 2018**

**Tabling in LegCo** : Council meeting of 11 July 2018

**Amendment to be made by** : Council meeting of 24 October 2018 (or that of 14 November 2018 if extended by resolution)

**Air Pollution Control (Fuel for Vessels) Regulation (L.N. 135)**

L.N. 135 is made by the Secretary for the Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment ("ACE") to make it mandatory for vessels to use certain fuels when they are within the waters of Hong Kong, and to provide for the requirement to keep records and documents in respect of certain vessels.

2. The key provisions of L.N. 135 are summarized as follows:

- (a) under section 2, compliant fuel means low sulphur marine fuel with sulphur content not exceeding 0.5% by weight, liquefied natural gas, or any fuel approved by the air pollution control authority ("the Authority");
- (b) sections 5 and 6 provide for the prohibition of the use of non-complaint fuel by vessels when they are in the waters of Hong Kong, and the offence and penalty in relation to contravention of the prohibition by the owner or the master of the vessels concerned (i.e. liable on conviction to a fine of \$200,000 and to imprisonment for six months);
- (c) sections 7 to 11 empower the Authority to exempt a vessel from the prohibition of the use of non-compliant fuel within Hong Kong waters under certain conditions upon the application by the owner, the master or the agent of a vessel and to revoke the exemption on certain grounds;
- (d) sections 12 to 15 provide for (i) the requirements in respect of the particulars that must be recorded in a log book of an ocean going vessel in the waters of Hong Kong, the keeping of documents on the vessel and the submission of copies of documents to the Authority and (ii) the offences and penalties in relation to contravention of the requirements (i.e. liable on conviction to a fine at level 5 (i.e. \$50,000) and to imprisonment for three months);

- (e) section 16 empowers the Authority to approve a fuel as compliant fuel under certain circumstances and section 17 provides for the test methods for determining the sulphur content of a fuel;
- (f) section 18 repeals the Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation (Cap. 311AA), the scope of control under which are covered by L.N. 135, and section 19 provides for transitional arrangements relating to Cap. 311AA; and
- (g) the Schedule sets out the details of the transitional and savings provisions.

3. L.N. 135 does not apply to a warship or any other vessel on military service, or a vessel that does not carry any compliant fuel for operating its specified machinery but enters the waters of Hong Kong solely for the purpose(s) of reducing risks to the safety of the vessel, sheltering from stress of weather, and/or landing a sick or injured person, provided that the owner or the master of the vessel has notified the Director of Marine of such purpose(s) before the vessel enters the waters of Hong Kong (section 3 of L.N. 135).

4. According to the Legislative Council ("LegCo") Brief (File Ref: EP 150/NV/50) issued by the Environmental Protection Department in July 2018, L.N. 135 is made following the Chief Executive's announcement in her Policy Address in October 2017 to mandate vessels in Hong Kong waters to use low sulphur fuel starting from January 2019. According to paragraphs 20 and 21 of the LegCo Brief, relevant stakeholders, including shipping agents, trade associations, fishing associations, ferry operators, yacht clubs, classification societies, terminal operators, oils suppliers, green groups, chambers of commercial/professionals institutions and consulates were consulted respectively in 2017. They were supportive of the proposed control. In July 2017, the ACE discussed and supported the proposal.

5. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 17 July 2017. Members did not raise any objection to the proposal, but urged the Administration to inform the shipping trade early on the way forward of further controlling marine emissions. The Panel also discussed issues including incentive schemes to offset additional fuel cost implications on the trade and other measures to reduce marine emissions.

6. L.N. 135 comes into operation on 1 January 2019.

## **Pharmacy and Poisons (Amendment) (No. 4) Regulation 2018 (L.N. 136)**

7. L.N. 136 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. It amends the Pharmacy and Poisons

Regulations (Cap. 138A) by adding one item of substance (i.e. nusinersen; its salts) ("the substance") to Division A of Schedule 1 to Cap. 138A, Division A of Schedule 3 to Cap. 138A and Division A of Part 1 of the Poisons List set out in Schedule 10 to Cap. 138A ("Poisons List").

8. The effect of L.N. 136 is that the substance is subject to restrictions concerning its sale, supply, labelling and storage, and that it can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Further, the inclusion of the substance in the Poisons List means that it 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.

9. According to paragraph 4 of the LegCo Brief (File Ref.: FHB/H/23/4) issued by the Food and Health Bureau in July 2018, PPB considers the amendments appropriate in view of the potency, toxicity and potential side effects of the substance. Members may refer to Annex B to the LegCo Brief for details of the substance.

10. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 136.

11. L.N. 136 came into operation on the day on which it was published in the Gazette, i.e. 6 July 2018.

**Construction Workers Registration (Levy) (Amendment)  
Notice 2018**

**(L.N. 137)**

12. L.N. 137 is made by the Secretary for Development under section 23 of the Construction Workers Registration Ordinance (Cap. 583) to raise the upper limit of the total value of construction operations that are not liable to levy under Cap. 583 from \$1 million to \$3 million.

13. Under section 23(1) of Cap. 583, a levy at the prescribed rate is to be imposed on the value of all construction operations undertaken or carried out in Hong Kong. Section 23(2) of Cap. 583 provides that construction operations the total value of which does not exceed the prescribed amount shall not be liable to the levy (i.e. levy threshold). Section 3 of the Construction Workers Registration (Levy) Notice (Cap. 583A) prescribes the amount for the purpose of section 23(2) to be \$1 million which has remained unchanged since Cap. 583A came into operation in February 2005.

14. According to the first paragraph of the LegCo Brief (File Ref: DEVB(CR)(W)1-10/22) issued by Development Bureau in July 2018, the making of L.N. 137 is to align the levy threshold under Cap. 583 with those under the Construction Industry Council Ordinance (Cap. 587) and the Pneumoconiosis and

Mesothelioma (Compensation) Ordinance (Cap. 360) which were raised from \$1 million to \$3 million by resolutions passed by LegCo on 27 June 2018.<sup>1</sup>

15. A subcommittee was formed to study the two proposed resolutions under Cap. 587 and Cap. 360 ("Subcommittee") before they were passed by LegCo. Members may refer to the report of the Subcommittee dated 13 June 2018 (LC Paper No. CB(1)1115/17-18) for further details.

16. As advised by the Clerk to the Panel on Development, the Administration briefed the Panel on 27 March 2018 on the proposal to raise the levy threshold under Cap. 583 and Members did not object to the proposal. The Administration also advised the Panel that the levy threshold under Cap. 583 would be raised along with the same increase in the levy thresholds under Cap. 587 and Cap. 360 on the same effective date.

17. L.N. 137 comes into operation on 30 July 2018. i.e. the same date on which the two resolutions under Cap. 587 and Cap. 360 come into operation.

**District Court Ordinance — Resolution of the Legislative Council (Commencement) Notice (L.N. 138)**

**Small Claims Tribunal Ordinance — Resolution of the Legislative Council (Commencement) Notice (L.N. 139)**

**Small Claims Tribunal (Fees) (Amendment) Rules 2018 (L.N. 140)**

L.N. 138 and L.N. 139

18. By L.N. 138 and L.N. 139, the Chief Justice has appointed 3 December 2018 as the day on which the two resolutions passed by LegCo on 27 June 2018 and published in the Gazette as L.N. 131 of 2018 and L.N. 132 of 2018 come into operation.

19. L.N. 131 and L.N. 132 were respectively made under section 73A of the District Court Ordinance (Cap. 336) and section 6 of the Small Claims Tribunal Ordinance (Cap. 338) to adjust the civil jurisdictional limits of the District Court ("DC") and the Small Claims Tribunal ("SCT") respectively, including the increase of the general financial limit of the civil jurisdiction of DC from \$1 million to

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<sup>1</sup> The two resolutions under Cap. 587 and Cap. 360 were passed by LegCo on 27 June 2018 and published in the Gazette as L.N. 133 of 2018 and L.N. 134 of 2018 respectively on 29 June 2018. Under section 70(2) and (5) of Cap. 587 and section 36(2) and (5) of Cap. 360, the two resolutions will come into effect on the expiry of the period of 30 days after publication in the Gazette (i.e. 30 July 2018).

\$3 million and the increase of the general financial limit of civil jurisdiction of SCT under paragraphs 1 and 2(b) of the Schedule to Cap. 338 from \$50,000 to \$75,000.<sup>2</sup>

20. A subcommittee was formed to study the two proposed resolutions under Cap. 336 and Cap. 338 ("Subcommittee") before they were passed by LegCo. Members may refer to the report of the Subcommittee dated 6 June 2018 (LC Paper No. CB(4)1194/17-18) for further details.

L.N. 140

21. L.N. 140 is made by the Chief Justice under section 36 of Cap. 338 to amend the Small Claims Tribunal (Fees) Rules (Cap. 338B).

22. Item 1 of the Schedule to Cap. 338B specifies four levels of fees for filing of claims by parties at SCT based on four ranges of claim amounts. Currently, the maximum claim amount is \$50,000, being the current jurisdictional limit of SCT. To align with the increase in the jurisdictional limit of SCT from \$50,000 to \$75,000 by L.N. 132 of 2018, L.N. 140 increases the maximum claim amount specified in item 1 of the Schedule to Cap. 338B from \$50,000 to \$75,000 and adjusts the ranges of claim amounts as follows:

<b>Current range of claim amounts</b>	<b>Revised range of claim amounts</b>	<b>Fee (\$)</b>
where the claim does not exceed \$3,000	for a claim that does not exceed \$5,000	20
where the claim exceeds \$3,000 but does not exceed \$17,000	for a claim that exceeds \$5,000 but does not exceed \$25,000	40
where the claim exceeds \$17,000 but does not exceed \$33,000	for a claim that exceeds \$25,000 but does not exceed \$50,000	70
where the claim exceeds \$33,000 but does not exceed \$50,000	for a claim that exceeds \$50,000 but does not exceed \$75,000	120

23. According to paragraph 8 of the LegCo Brief (File Ref: LM(3) to SC 101/17/16) issued by the Judiciary Administration in July 2018, each range of claim amounts under item 1 of the Schedule to Cap. 338B is adjusted upwards by a percentage which corresponds with the percentage increase in the SCT's jurisdictional limit. The existing fee in respect of each range of claim amounts remains unchanged.

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<sup>2</sup> Other adjustments to the civil jurisdictional limits of DC under L.N. 131 of 2018 include increasing the financial limit for land matters of DC from \$240,000 to \$320,000 (in terms of the annual rent or the rateable value or the annual value of the land); increasing the limit for the equity jurisdiction of DC where the proceedings do not involve or do not relate to land from \$1 million to \$3 million; and increasing the limit for the equity jurisdiction of DC where the proceedings involve or relate to land from \$3 million to \$7 million.

24. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel was consulted at its meeting on 24 April 2017 on the proposed increase in civil jurisdictional limits of DC and SCT and members raised no objection to the proposal. Members also noted and raised no objection to the consequential amendments to Cap. 338B.

25. L.N. 140 comes into operation on the day on which L.N. 132 of 2018 comes into operation, i.e. 3 December 2018.

### **Concluding observations**

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

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