

**立法會**  
**Legislative Council**

LC Paper No. LS73/12-13

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 26 July 2013**

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

**United Nations Sanctions Ordinance (Cap. 537)**

**United Nations Sanctions (Eritrea) (Amendment) Regulation 2013  
(L.N. 136)**

**United Nations Sanctions (Somalia) (Amendment) Regulation 2013  
(L.N. 137)**

L.N. 136 and L.N. 137 are made by the Chief Executive (CE) under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instructions of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

L.N. 136

2. On 23 December 2009, the Security Council of the United Nations (UNSC) adopted Resolution 1907 (2009) to impose a range of sanctions against Eritrea in view of the international concern over the unresolved border dispute between Eritrea and Djibouti and Eritrea's support to the armed groups in Somalia that upset the peace process in the region. These sanctions were implemented in Hong Kong through the United Nations Sanctions (Eritrea) Regulation (Cap. 537 sub. leg. AR) (the Eritrea Regulation).

3. Under the Eritrea Regulation, the supply, sale, transfer or carriage of arms or related materiel to Eritrea, a person connected with Eritrea or a designated person and the provision of technical assistance, training, or financial or other assistance related to military activities or to the provision, manufacture, maintenance or use of arms or related materiel to a person connected with Eritrea are prohibited.

4. Welcoming the positive development in Eritrea, UNSC adopted Resolution 2060 (2012) on 25 July 2012 to, amongst other things, relax the sanctions against Eritrea as mentioned in paragraph 3 above. L.N. 136 is made

to implement the relevant part of that Resolution by providing for certain exceptions to the existing sanctions. New sections 9A and 9B are added to the Eritrea Regulation to empower CE to grant a licence for the supply, sale, transfer or carriage of arms or related materiel to Eritrea or a person connected with Eritrea, or for the provision of technical assistance, training, or financial or other assistance related to military activities or to the provision, manufacture, maintenance or use of arms or related materiel to a person connected with Eritrea if -

- (a) the arms or related materiel are, or the assistance or training is related to, protective clothing, including flak jackets and military helmets, to be temporarily exported to Eritrea by the personnel of the United Nations, representatives of the media, humanitarian or development workers or associated personnel, for their personal use only; and
- (b) the arms or related materiel are, or the assistance or training is related to the supply of, non-lethal military equipment intended solely for humanitarian or protective use, as approved in advance by the Committee of UNSC established under Resolution 751 (1992) and expanded by Resolution 1844 (2008).

5. L.N. 136 also makes consequential amendments to the Eritrea Regulation in view of the addition of new sections 9A and 9B. In addition, amendments are made to bring the structure and style of the relevant provisions under the Eritrea Regulation in line with that of similar provisions in other regulations recently made under Cap. 537.

#### L.N. 137

6. Since 1992, UNSC has adopted various resolutions to impose sanctions against Somalia having regard to the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country. The United Nations Sanctions (Somalia) Regulation (Cap. 537 sub. leg. AN) (the Somalia Regulation) was made and amended to implement these sanctions.

7. The sanctions provided under the Somalia Regulation include prohibiting -

- (a) the supply, sale, transfer or carriage of weapons or military equipment to Somalia, a person connected with Somalia or a designated person;

- (b) the provision of technical assistance or training, or financial or other assistance related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons or military equipment to a designated person;
- (c) the entry or transit through Hong Kong by a designated person; and
- (d) the provision of technical advice, financial or other assistance or training related to military activities to a person connected with Somalia.

8. Recognizing the significant progress that has been made in Somalia over the past year while noting that the situation in Somalia continues to pose a threat to international peace and security in the region, UNSC adopted Resolution 2093 (2013) on 6 March 2013 to revise the sanctions against Somalia. To implement the revised sanctions, L.N. 137 is made to amend the Somalia Regulation by -

- (a) revising the definition of "designated person" under section 1;
- (b) providing for additional exceptions to the prohibition against -
  - (i) the supply, sale, transfer or carriage of weapons or military equipment to certain persons; and
  - (ii) the provision of certain advice, assistance or training to certain persons.

9. L.N. 137 also makes technical amendment to the definition of "relevant person" under section 1 of the Somalia Regulation. It further makes drafting amendments to other provisions of the Somalia Regulation.

#### Other points

10. L.N. 136 and L.N. 137 have come into operation when they were published in the Gazette on 26 July 2013. Members may refer to the LegCo Briefs issued by the Commerce and Economic Development Bureau in July 2013 (no file reference provided) relating to L.N. 136 and L.N. 137 respectively for further information.

11. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) do not apply to regulations made under Cap. 537. Accordingly, L.N. 136 and L.N. 137 are not

required to be tabled at the Legislative Council and are not subject to amendment by the Legislative Council. However, 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 (the Subcommittee). As advised by the Clerk to the Subcommittee, L.N. 136 and L.N. 137 have been circulated to members of the Subcommittee on 29 July 2013 (LC Paper Nos. CB(1)1628/12-13(01) and (02)).

**Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474)**  
**Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2013 (L.N. 138)**

12. L.N. 138 is made by the Commissioner for Transport (the Commissioner) under section 45(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) to replace Schedule 1 to that Ordinance with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Tai Lam Tunnel and Yuen Long Approach Road (Route 3 (CPS)). L.N. 138 came into operation on 1 August 2013.

13. Cap. 474 provides for a toll adjustment mechanism for Route 3 (CPS) as follows -

- (a) Route 3 (CPS) Company Limited (the Franchisee) may, during the franchise period and subject to the relevant requirements, apply in writing to the Secretary for Transport and Housing (the Secretary) to give effect to an anticipated toll increase on each of three specified dates (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) (section 39);
- (b) if the Actual Net Revenue (ANR) of the Franchisee for any year which is not a year immediately preceding a year in which a specified date occurs is less than the Minimum Estimated Net Revenue (MENR) for that year as specified in Schedule 4, the Franchisee may apply to the Secretary to give effect to the next anticipated toll increase (section 40);
- (c) where the Franchisee has given effect to all the anticipated toll increases and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year as stated in Schedule 4, it may apply to the Secretary to give effect to an additional toll increase (section 42);
- (d) the amounts of toll increase to which the Franchisee may give effect in respect of different categories of vehicles are set out in Schedule 2 (section 44(5));

- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 45(1)); and
- (f) section 34 of Cap. 1 does not apply in respect of any such notice; accordingly, any such notice, including L.N. 138, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (section 45(3)).

14. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 19/3/5591/91) issued by the Transport and Housing Bureau (THB) in July 2013, the Franchisee's ANR has, since the commissioning of Route 3 (CPS) in 1998, consistently fallen short of the level of MENR as stipulated in Schedule 4 to Cap. 474. By 19 June 2005, the Franchisee has effected all the anticipated toll increases and has since applied for and been permitted seven additional toll increases. The last statutory toll increase for Route 3 (CPS) came into effect on 1 August 2012.

15. The present increase as reflected in L.N. 138, which was applied by the Franchisee in August 2009, is the eighth additional toll increase. The amounts of increase are in accordance with the amounts stated in Schedule 2 to Cap. 474. It is based on the Franchisee's audited 2008/09 statement of ANR which shows that the Franchisee's ANR for 2008/09 was \$578 million, which is lower than MENR of \$1,605 million for that year as specified in Schedule 4 to Cap. 474.

16. According to paragraph 11 of the LegCo Brief, the Franchisee will continue to offer concessions to all categories of vehicles so that the current concessionary tolls<sup>1</sup> will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of Route 3 (CPS) will not be affected by the changes in the statutory tolls.

17. A comparison of the Route 3 (CPS) statutory tolls before and after the increase under L.N. 138, and the applicable concessionary tolls, is at **Annex I**.

18. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 138.

19. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 138.

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<sup>1</sup> The current concessionary tolls took effect from 1 January 2013.

**Western Harbour Crossing Ordinance (Cap. 436)**

**Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2013 (L.N. 139)**

20. L.N. 139 is made by the Commissioner under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) to replace Schedule 1 to that Ordinance with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Western Harbour Crossing (WHC). L.N. 139 came into operation on 31 July 2013.

21. Cap. 436 provides for a toll adjustment mechanism for WHC which is similar to that for Route 3 (CPS) as described in paragraph 13 above as follows -

- (a) Western Harbour Tunnel Company Limited (the Company) may, during the franchise period and subject to the relevant requirements, apply in writing to the Secretary to give effect to an anticipated toll increase on each of six specified dates (i.e. 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) (section 45);
- (b) where in respect of any year which is not a year ending immediately before a specified date, the net revenue of the Company is less than MENR for that year as stipulated in Schedule 5, the Company may apply to the Secretary to give effect to the next anticipated toll increase (section 46);
- (c) where the Company has given effect to all the anticipated toll increases and its net revenue in respect of any year before the expiry of the franchise period is less than MENR for that year as specified in Schedule 5, the Company may apply to the Secretary to give effect to an additional toll increase (section 48);
- (d) the amounts of toll increase to which the Company may give effect to for different categories of vehicles on or after 1 January 2011 are set out in Schedule 3 (section 50);
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 52(1)); and
- (f) section 34 of Cap. 1 does not apply in respect of any such notice; accordingly, any such notice, including L.N. 139, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (section 52(3)).

22. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 1/4651/99) issued by THB in July 2013, the actual net revenue of the Company has, since the commissioning of WHC in 1997, consistently fallen short of the level of MENR as specified in Schedule 5 to Cap. 436. By 31 July 2006, the Company has effected all the anticipated toll increases and has since applied for and been permitted six additional toll increases. The last statutory toll increase for WHC came into effect on 31 July 2012.

23. The present increase as reflected in L.N. 139, which was applied by the Company in August 2010, is the seventh additional toll increase. The amounts of increase are in accordance with the amounts stated in Schedule 3 to Cap. 436. It is based on the Company's audited 2009/10 statement of net revenue which shows that the Company's actual net revenue for 2009/10 was \$867 million, which is lower than MENR of \$2,028 million for that year as specified in Schedule 5 to Cap. 436.

24. According to paragraph 11 of the LegCo Brief, the Company will continue to offer concessions to all categories of vehicles so that the current concessionary tolls<sup>2</sup> will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of WHC will not be affected by the changes in the statutory tolls.

25. A comparison of the WHC statutory tolls before and after the increase under L.N. 139, and the applicable concessionary tolls, is at **Annex II**.

26. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 139.

27. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 139.

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<sup>2</sup> The current concessionary tolls took effect from 1 January 2013.

Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2013	
1.	Motorcycles, motor tricycles	60	65	20
2.	Private cars, electrically powered passenger vehicles, taxis	65	70	36
3.	Public and private light buses	180	195	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	180	195	38
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	70	75	0
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	190	205	43
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	70	75	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	210	225	48
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	70	75	0
7.	Public and private single-decked buses	180	195	115
8.	Public and private double-decked buses	195	210	135



**Annex II**

Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2013	
1.	Motorcycles, motor tricycles	80	90	25
2.	Private cars, electrically powered passenger vehicles	150	165	55
	Taxis	150	165	50
3.	Public and private light buses	170	190	65
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	220	240	65
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	150	165	30
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	315	350	90
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	150	165	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	455	500	120
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	150	165	30
7.	Public and private single-decked buses	170	190	100
8.	Public and private double-decked buses	250	280	140