

立法會
Legislative Council

LC Paper No. LS8/13-14

**Paper for the House Committee Meeting
on 1 November 2013**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 25 October 2013**

Tabling in LegCo : Council meeting of 30 October 2013

Amendment to be made by : Council meeting of 27 November 2013 (or that of 18 December 2013 if extended by resolution)

**Air Pollution Control (Air Pollutant Emission)
(Controlled Vehicles) Regulation** **(L.N. 160)**

L.N. 160 is made by the Secretary for the Environment (SE) under section 43(1)(r) and (rg)¹ of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment (the Council) to impose emission standards on any goods vehicle, light bus or non-franchised bus² which is equipped with a compression-ignition engine (diesel vehicle) in order to improve roadside air quality. L.N. 160 aims to phase out pre-Euro IV diesel vehicles, and to impose a service life limit of 15 years for new diesel vehicles first registered under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) on or after 1 February 2014.

2. According to paragraph 3 of the LegCo Brief (File Ref.: EP150/A7/1) issued by the Environmental Protection Department (EPD) in October 2013, the retirement deadlines for pre-Euro, Euro I, Euro II and Euro III diesel vehicles are 1 January 2016, 1 January 2017, 1 January 2018 and 1 January 2020 respectively (the specified dates), which are specified in section 4(2) of L.N. 160. According to the LegCo Brief, an ex-gratia payment ranging

¹ Section 43(1)(r) and (rg) empowers SE to make regulation for the application of standards (including vehicle design standards) and the imposition of requirements as to the design, construction, maintenance, adjustment, repair or operation of any motor vehicle or motor vehicle engine to prohibit or control air pollutant emission.

² "Goods vehicle", "light bus" and "bus" have the meanings given by section 2 of the Road Traffic Ordinance (Cap. 374), whereas "non-franchised bus" means a bus that is not a franchised bus in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230).

from 27% to 33% of the average taxable values of new vehicles is proposed to be offered to vehicle owners for phasing out their pre-Euro IV diesel vehicles. The ex-gratia payment will involve a one-off non-recurrent funding of about \$11.71 billion, for which approval will be sought from the Finance Committee.

3. Under sections 4 and 5 of L.N. 160, for the purposes of an application for a vehicle licence under Cap. 374E made on or after the specified dates (or the 15th anniversary of the date of first registration for a diesel vehicle first registered on or after 1 February 2014), the emission of the vehicle must conform to the applicable emission standards under the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311J) as if the vehicle were first registered on the date on which the application is made. By virtue of section 25(1)(iic) of the Road Traffic Ordinance (Cap. 374), the Commissioner for Transport may refuse to license the vehicle if it does not comply with any emission requirements under L.N. 160 or Cap. 311J.

4. Section 6 of L.N. 160 provides for the granting of exemption in exceptional circumstances making it impractical or unreasonable for a vehicle or a type of vehicle to comply with L.N. 160. The Legal Service Division (LSD) has written to EPD to enquire about the procedure for seeking exemption. If necessary, a further report will be issued after considering EPD's reply.

5. According to the LegCo Brief, both the Council and the Transport Advisory Committee, which were consulted in March 2013, supported the proposal. Having consulted the transport operators, vehicle vendors, vehicle body builders and vehicle scrapping agents, the Administration revised its initial proposal, and again briefed the relevant transport trades and other stakeholders on the revised proposal in early October 2013. They were generally supportive.

6. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted on the proposal on 15 May 2013. The Panel received public views on the proposal on 25 May 2013, and was consulted on the revised proposal on 2 October 2013. Members generally considered that the revised proposal had suitably addressed the concerns expressed by the transport trades on the level of the ex-gratia payment and the criteria for granting the payment. They urged the Administration to speed up the implementation of the revised proposal. Whilst appreciating the difficult operating environment faced by the transport trades, some Members were of the view that any extension of the deadlines for phasing out pre-Euro IV diesel vehicles would be against the policy intent to improve roadside air quality and better protect public health.

7. L.N. 160 comes into operation on 1 February 2014.

Companies Ordinance (Amendment of Schedule 7) Notice 2013	(L.N. 161)
Companies Ordinance (Amendment of Schedule 10) Notice 2013	(L.N. 162)
Companies Ordinance (Commencement) Notice 2013	(L.N. 163)

Background

8. The new Companies Ordinance (Cap. 622) was enacted in July 2012. It modernizes company law by, among other measures, abolishing the nominal value of shares and introducing paperless holding and transfer of shares and debentures (uncertificated securities). It also provides for a new arrangement for inspection whereby the Registrar of Companies (the Registrar) may withhold residential addresses of company directors and full identification numbers of individuals from public inspection (new inspection arrangement). To bring Cap. 622 into operation, three batches consisting of 12 items of subsidiary legislation on various administrative, procedural and technical matters (including the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B)) were gazetted on 1 February, 22 March and 24 May 2013 respectively. Members may refer to the report of the Bills Committee on Companies Bill (LC Paper No. CB(1)2221/11-12) and the three reports of the Subcommittee on Subsidiary Legislation Made under the New Companies Ordinance (LC Papers Nos. CB(1)727/12-13, CB(1)949/12-13 and CB(1)1469/12-13) for further details.

L.N. 161

9. Under section 899 of Cap. 622, the Registrar may give a person reasonably believed to have committed an offence specified in Schedule 7 a notice to require him to rectify the default by paying a compounding fee to the Registrar and remedying the breach constituting the offence within a specified period. If that person complies with the notice, no proceedings will be instituted against him for that offence. Schedule 7 to Cap. 622 currently specifies six compoundable offences relating to failure to deliver the director's written consent (section 74(2)), failure to engrave the company's name on its common seal (section 124(3)), use of an improper seal (section 124(4)), and failure to deliver annual returns (sections 662(6) and 788(3)) and accounts (section 789(3)). During the scrutiny of Schedule 7 to the Companies Bill, the Administration indicated its intention to add further offences to Schedule 7.

10. L.N. 161 is made by the Financial Secretary (FS) under section 911(1) of Cap. 622 to amend Schedule 7 so as to include failure to display the company's name and liability status under section 792(1) or (2) of Cap. 622 and section 7(1) or (2) of Cap. 622B as compoundable offences.

L.N. 162

11. According to the LegCo Brief (File Ref.: CBT/7/6/13-14) issued by the Financial Services and the Treasury Bureau on 23 October 2013, Schedule 10 to Cap. 622 currently only contains consequential and related amendments to various Ordinances passed and subsidiary legislation made up to April 2012.

12. L.N. 162 is made by FS under section 912(2) of Cap. 622 to amend Schedule 10 to make further consequential and related amendments to various pieces of legislation such as the Banking (Disclosure) Rules (Cap. 155M), the Air Transport (Licensing of Air Services) Regulations (Cap. 448A), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Securities and Futures Ordinance (Cap. 571), the Competition Ordinance (Cap. 619), and the Residential Properties (First-hand Sales) Ordinance (Cap. 621). These amendments include:

- (a) updating references to "(Cap. 32)" (the existing Companies Ordinance which will be renamed Companies (Winding up and Miscellaneous Provisions) Ordinance) to "(Cap. 622)";
- (b) using "控權公司" as the Chinese rendition of "holding company";
- (c) correcting certain typographical or cross-referencing errors; and
- (d) changes necessitated by the abolition of nominal value of shares so that the disclosure requirements under Part XV of Cap. 571 and its subsidiary legislation will be based on the number (rather than nominal value) of voting shares in which a person is interested.

L.N. 163

13. By L.N. 163 made under section 1(2) of Cap. 622, the Secretary for Financial Services and the Treasury appoints 3 March 2014 as the date of commencement of all provisions of Cap. 622, except:

- (a) relevant provisions in Parts 2³, 12⁴ and 16⁵ of, and Schedules 2⁶, 6⁷ and 11⁸ to, Cap. 622 regarding the new inspection arrangement; and
- (b) section 908 and Schedule 8 concerning uncertificated securities.

³ Section 27(3), (4), (5) and (6) in so far as it relates to a director or reserve director, and sections 47, 49, 50, 51 and 52 and Subdivision 2 of Division 7

⁴ Section 643(1)(a)(ii), (2)(b) and (3)(b) in so far as it relates to a correspondence address, and sections 643(5), 644, 645(5), 647(4) and (5), 651 and 657(2)(g)

⁵ Sections 791(4) and 802(4) and (5)

⁶ Section 3(1)(a)(iii) and (2)

⁷ Sections 3 and 4

⁸ Section 115

14. According to the LegCo Brief, the Administration would not bring the provisions related to the new inspection arrangement into operation together with the other provisions of Cap. 622 until the Administration's further consideration of the relevant matters was completed. In order to introduce an uncertificated securities regime contemplated by section 908 and Schedule 8, other necessary amendments have to be made to the Stamp Duty Ordinance (Cap. 117), Cap. 571 and Cap. 622. The Administration aims to introduce the relevant amendment bill in the second half of the 2013-14 legislative session.

15. L.N. 161 and L.N. 162, together with the subsidiary legislation referred to in paragraph 8 above, come into operation on the day on which their respective empowering provisions come into operation, i.e. 3 March 2014.

16. As advised by the Clerk to the Panel on Financial Affairs, when the Panel was consulted on the three batches of subsidiary legislation at its meeting held on 7 January 2013, the Administration informed the Panel of its plan to update Schedules 7 and 10 to Cap. 622 in late 2013 to prepare for the commencement of Cap. 622 in the first quarter of 2014. The Panel was further consulted on 7 April 2013 on the Administration's proposal to suspend implementation of the new inspection arrangement in view of serious concerns expressed by some sectors of the community. As a result, the Administration would not make subsidiary legislation relating to the new inspection arrangement or include provisions on the new inspection arrangement in the commencement notice of Cap. 622. During discussion at the Panel meeting, while some members supported the Administration's plan to suspend the new inspection arrangement and to conduct fresh consultation with stakeholders with a view to improving the new inspection arrangement, some members had reservations as the existing inspection arrangement was privacy intrusive, and there were problems of abuse in using the information by a third party as well as possible nuisances caused to directors and their families. The Panel urged the Administration to strike a reasonable balance between privacy protection and enhancing transparency of company operation, and to engage the public, relevant stakeholders and the Office of the Privacy Commissioner for Personal Data extensively in sorting out the related issues.

Lifts and Escalators Ordinance (Commencement)

Notice 2013

(L.N. 164)

17. The Lifts and Escalators Ordinance (Cap. 618) was enacted in April 2012 to provide for lift and escalator safety, including the registration of contractors, engineers and workers for the purposes of carrying out lift and escalator works. The provisions of Cap. 618 (except sections 8(2), 9(2) and 11 to 26 of Schedule 16) came into operation on 3 July 2012 (L.N. 85 of 2012), 17 December 2012 (L.N. 165 of 2012) and 2 April 2013 (L.N. 166 of 2012).

18. By L.N. 164, the Secretary for Development appoints 2 January 2014 as the day on which sections 8(2), 9(2), 11 to 13, 16 to 18 and 22 of Schedule 16 to Cap. 618 come into operation. These provisions are to terminate the transitional arrangements which allow workers with qualifications equivalent to competent lift/escalator workers under the repealed Lifts and Escalators (Safety) Ordinance (Cap. 327) to carry out lift or escalator works before they are registered under Cap. 618. Upon LSD's enquiry, the Administration has indicated that over 90% of competent lift/escalator workers have been registered under Cap. 618 and that the remaining workers are anticipated to be registered by the end of 2013. According to the Administration, the Construction Industry Council, the Hong Kong General Union of Lift and Escalator Employees and the relevant trade associations were consulted in July and August 2013 on the proposed commencement of these provisions, to which they expressed no objection. As regards the remaining provisions of Cap. 618 relating to the transitional arrangements for the qualification requirements of registered lift/escalator workers and engineers under Cap. 618, the Administration indicates that it does not have a fixed schedule on their commencement because of the need to take into account the impact on the livelihood of existing workers/engineers and the human resources in the industry. No LegCo Brief has been issued in respect of L.N. 164.

19. As advised by the Clerk to the Panel on Development, the Panel has not been consulted on L.N. 164. However, during the scrutiny of the Lifts and Escalators Bill in 2011, the relevant Bills Committee examined the proposed registration scheme for certain persons engaged in lift and escalator works, and the details of the transitional arrangements for practising lift and escalator workers and engineers. The Administration reassured the Bills Committee that the livelihood of practising lift and escalator workers and engineers would not be affected by the proposed registration scheme and that there would be sufficient manpower in the market to carry out lift or escalator works. The Administration would also consult the industry stakeholders before considering the termination of the transitional arrangements. Members may refer to paragraphs 22 to 24 and 39 to 44 of the report of the Bills Committee on Lifts and Escalators Bill (LC Paper No. CB(1)1117/11-12) for further details.

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

United Nations Sanctions (Somalia) (Amendment) (No. 2) Regulation 2013

(L.N. 165)

20. L.N. 165 is made by the Chief Executive (CE) 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.

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

- (a) the supply, sale, transfer or carriage of weapons or military equipment (prohibited goods) to Somalia, a person connected with Somalia⁹ or a designated person¹⁰;
- (b) the provision of technical, financial or other assistance related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of prohibited goods to a designated person;
- (c) making available any funds or other financial assets or economic resources to a relevant person or relevant entity specified by CE or to any person acting on their behalf or at their direction; and
- (d) any dealing with any funds or other financial assets or economic resources owned or held by a relevant person or relevant entity.

22. 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 2111 (2013) on 24 July 2013 to revise the sanctions against Somalia. Members may refer to the LegCo Brief (no reference provided) issued by the Commerce and Economic Development Bureau in October 2013 for details.

23. To implement the revised sanctions under Resolution 2111, L.N. 165 is made to amend Cap. 537AN to include new exceptions to the arms embargo measures, the prohibition against the provision of advice, assistance and training, and the financial sanctions in respect of Somalia. One such exception under the new section 10(2)(d) of Cap. 537AN is that the funds or other financial assets or economic resources are necessary to ensure timely delivery of urgently needed humanitarian assistance in Somalia. L.N. 165 provides that the new section 10(2)(d) expires at midnight on 24 October 2014, i.e. one year after L.N. 165 came into operation upon gazettal on 25 October 2013¹¹.

⁹"Person connected with Somalia" includes the Government of Somalia, any person in (or resident in) Somalia, any body incorporated or constituted under the law of Somalia, and any body controlled by (or any person acting on behalf of) any of the above, but does not include a designated person.

¹⁰"Designated person" includes a person or an entity designated by the Committee of the Security Council as engaging in or supporting acts that threaten the peace, security or stability of Somalia, obstructing the delivery or distribution of humanitarian assistance to or in Somalia, or being responsible for violations of international law in Somalia by targeting civilians (including children and women) in situations of armed conflict.

¹¹L.N. 165 does not contain a commencement provision. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), L.N. 165 came into operation on the day of gazettal on 25 October 2013.

24. 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. 165 is not required to be tabled at LegCo and is not subject to amendment by LegCo. However, it comes 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. As advised by the Clerk to the Subcommittee, L.N. 165 has been circulated to Members vide LC Paper No. CB(1)166/13-14(01) on 28 October 2013.

Concluding Observations

25. As noted in paragraph 4 above, LSD has written to the Administration with regard to L.N. 160 and, if necessary, will issue a further report after considering its reply. No difficulties have been identified in relation to the legal or drafting aspects of L.N. 161 to L.N. 165.

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