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**Paper for the House Committee Meeting
on 31 October 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 October 2014**

Tabling in LegCo : Council meeting of 29 October 2014

Amendment to be made by : Council meeting of 26 November 2014 (or that of 17 December 2014 if extended by resolution)

PART I FEE REVISIONS

Mines (Safety) (Amendment) Regulation 2014 (L.N. 123)

Dangerous Goods (General) (Amendment) (No. 2) Regulation 2014 (L.N. 124)

Dangerous Goods (Government Explosives Depots) (Amendment) Regulation 2014 (L.N. 125)

Waterworks (Amendment) Regulation 2014 (L.N. 126)

L.N. 123, 124 and 125

The three Regulations, i.e. L.N. 123, 124 and 125 amend respectively Schedule 3 to the Mines (Safety) Regulations (Cap. 285B), the Table to regulation 183(1) of the Dangerous Goods (General) Regulations (Cap. 295B) and the Schedule to the Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295D) to revise certain fees and charges in relation to -

- (a) the issue, renewal and endorsement, and the replacement of worn, defaced or lost mine blasting certificate;
- (b) the grant or renewal of licences or permits relating to the manufacture, storage, movement and discharge of certain dangerous

goods in category 1, the issue of a duplicate of those licenses and permits and the making of an alteration or addition to, or endorsement on those licences or permits; and

- (c) the storage of explosives and explosive accessories in a Government Explosive Depot and the delivery of explosives and explosive accessories from such depot to any other place by the Government.

2. Members may refer to the LegCo Brief issued by the Development Bureau in October 2014 (no file reference provided) for details of the fees and charges revision and a comparison of the existing and revised fees and charges.

3. According to the Administration, the result of the costs review recently conducted by the Administration shows that the present cost recovery levels range from 22.8% to 94.4%. The revision of the relevant fees and charges in the three Regulations, which ranges from 5.9% to 20.5%, is made with a view to achieving full cost recovery gradually and to avoiding a steep increase (paragraphs 4 and 5 of LegCo Brief). The relevant fees and charges were last revised in November 1997 except two items (i.e. Replacement of worn or defaced mine blasting certificate under regulation 22(5)(c) and replacement of lost mine blasting certificate under regulation 22(10) in Items 3 and 5 of Annex 1 to the LegCo Brief respectively) which were last revised in March 1994.

4. As advised by the Clerk to the Panel on Development, at the meeting of the Panel on 7 July 2014, the Administration briefed the Panel on the proposed revision of fees payable for certain services under the three Regulations. Members did not raise any objections to the revision of the fees, which would not directly affect people's livelihood. Some members opined that, to achieve full cost recovery, the Administration should review the concerned fees and charges regularly and at a shorter interval, say, every three or five years, instead of 17 years as in the case of most of the charges covered by the three Regulations.

5. The three Regulations come into operation on 1 January 2015.

L.N. 126

6. L.N. 126 increases 25 items of fees and charges specified in Schedule 1 to the Waterworks Regulations (Cap. 102A) relating to the following services -

- (a) making a connection to the main and installing (including reinstatement of the ground surface) the part of a fire service or inside service on land held by the Government for pipe size up to and including 40 mm in diameter;

- (b) reconnecting a fire service or inside service;
- (c) providing and installing a meter;
- (d) providing a meter;
- (e) resealing a fire service or meter;
- (f) testing a meter or a private check meter (including removal and refixing);
- (g) plumber's licence issuance, renewal and examination;
- (h) fishing licence issuance;
- (i) examination of a water sample;
- (j) attendance for collection of any sample or samples; and
- (k) providing additional copy of examination report.

7. Members may refer to the LegCo Brief issued by the Development Bureau in October 2014 (no file reference provided) for details of the fees and charges revision and a comparison of the existing and revised fees and charges.

8. According to the Administration, the result of the costs review recently conducted by the Administration shows that the present cost recovery levels range from 19.1% to 95.3%. The revision of the relevant fees and charges in L.N. 126, which ranges from 4.6% to 20.8%, is made with a view to achieving full cost recovery gradually and to avoiding a steep increase (paragraphs 4 and 5 of LegCo Brief). The relevant fees and charges were last revised in December 2013 except the charge in relation to paragraph 6(k) above which was last revised in January 2011.

9. As advised by the Clerk to the Panel on Development, at the meeting of the Panel on 7 July 2014, the Administration briefed the Panel on the proposed revision of certain non-livelihood related fees and charges under the purview of the Water Supplies Department. Whilst members did not raise any objections to the proposed fee revision, they had enquired about the criteria for deciding whether a fee was "non-livelihood related".

10. L.N. 126 comes into operation on 1 January 2015.

PART II SECOND PHASE OF BASEL III IMPLEMENTATION

**Banking (Amendment) Ordinance 2012 (Commencement)
Notice 2014** (L.N. 127)

Banking (Capital) (Amendment) Rules 2014 (L.N. 128)

Banking (Liquidity) Rules (L.N. 129)

Background

11. The Banking (Amendment) Ordinance 2012 (3 of 2012) (BAO) was enacted in 2012 to amend the Banking Ordinance (Cap. 155) to provide for the framework for implementing in Hong Kong the revised regulatory capital, liquidity and disclosure standards promulgated by the Basel Committee on Banking Supervision (BCBS) (Basel III). Basel III is designed to further enhance the resilience of banks and banking systems and address weaknesses observed in the recent global financial crisis. Implementation should begin in January 2013, with the standards being phased-in over the subsequent six years to achieve full implementation by 1 January 2019. Under section 1(2) of BAO, BAO comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury (SFST) by notice published in the Gazette.

12. For implementation of the first phase Basel III capital standards and the associated disclosure requirements, the Banking (Amendment) Ordinance 2012 (Commencement) Notice 2012¹ was made by SFST to appoint 1 January 2013 as the day on which those BAO provisions relating to the powers of the Monetary Authority (MA) to make rules to prescribe these capital and disclosure requirements for authorized institutions (AIs) came into operation. The Banking (Capital) (Amendment) Rules 2012², which came into operation on 1 January 2013, and the Banking (Disclosure) (Amendment) Rules 2013³, which came into operation on 30 June 2013, were made by MA to prescribe these capital and disclosure requirements respectively.

13. According to paragraphs 1, 5 and 6 of the LegCo Brief (File Ref: B&M/2/1/63C) issued jointly by the Financial Services and the Treasury Bureau

¹ L.N. 158 of 2012.

² L.N. 156 of 2012. Please note that further amendments were made under the Banking (Capital) (Amendment) Rules 2013 (L.N. 51 of 2013), which came into operation on 30 June 2013, to implement the technical guidance issued by BCBS in December 2012 in relation to the counterparty credit risk framework and some miscellaneous refinements.

³ L.N. 52 of 2013.

and Hong Kong Monetary Authority (HKMA) on 22 October 2014, the second phase implementation of Basel III requirements in Hong Kong involves imposition of Basel III capital buffer requirements and liquidity coverage ratio (LCR) requirement on AIs.

L.N. 127

14. By L.N. 127 made under section 1(2) of BAO, SFST appoints 1 January 2015 as the day on which the uncommenced provisions of BAO come into operation (i.e. sections 3(4), 3(5) (in relation to the addition of the new definition of liquidity requirement rule), 5(2), 8 (in relation to the addition of the new Part XVIB and to the new section 97H(1) in the new Part XVIC), 12 (in relation to the new sections 97H(5), 97J(3) and 97K(7)), 13, 14, 15(1), 15(2) (in relation to section 104(2) of Cap. 155), 15(3) (in relation to liquidity ratio and section 105(1) of Cap. 155), 16, 17 and 18(3)). These include provisions that empower MA to make rules to prescribe liquidity requirements for AIs, repeal Part XVIII and the Fourth Schedule to Cap. 155 which contain the current liquidity ratio requirement, impose obligations on AIs incorporated in Hong Kong not to create certain charges and to notify MA of certain civil or criminal proceedings, and make other related and consequential amendments to Cap. 155.

L.N. 128

15. L.N. 128 is made by MA under section 97C of Cap. 155 after consultation with the Financial Secretary, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (the Statutory Consultees).

16. L.N. 128 amends the Banking (Capital) Rules (Cap. 155L) to impose on an AI incorporated in Hong Kong constraints on distribution payments where its net Common Equity Tier 1 capital ratio is equal to or below its buffer level. The buffer level is calculated by adding the capital conservation buffer ratio (the CB ratio)⁴, the countercyclical capital buffer ratio (the CCyB ratio)⁵, and where the AI concerned is a domestic systemically important AI (D-SIB) or a global systemically important AI (G-SIB), the higher loss absorbency ratio (the HLA ratio)⁶. The effect is to require AIs to conserve capital above the regulatory

⁴ The CB ratio is 0.625% for 2016 and will increase by equal annual increments to 2019 at 2.5%.

⁵ The CCyB ratio is calculated by the use of Formula 1A as set out in new section 30 of Cap. 155L. The purpose is for protecting the banking sector from periods of excess aggregate credit growth that have often been associated with the build-up of a system-wide risk.

⁶ The HLA ratio applicable to a D-SIB or G-SIB must, (a) for 2016, be not less than 0.25% and not more than 0.875%, (b) for 2017, be not less than 0.5% and not more than 1.75%, (c) for 2018, be not less than 0.75% and not more than 2.625%, and (d) at any time on or after 1 January 2019, be not less than 1% and not more than 3.5%.

minimum as buffer by restricting distribution payments.

17. To reflect the announcement made by BCBS in March 2014, L.N. 128 also adds two organizations, namely, the European Financial Stability Facility and European Stability Mechanism, to the list of relevant international organizations under Part 10 of Schedule 1 to Cap. 155L so as to enable AIs to accord these organizations a 0% risk-weighting when making the relevant calculations.

18. L.N. 128 further makes miscellaneous amendments to other provisions of Cap. 155L. These amendments, according to paragraph 6 of the Explanatory Note to L.N. 128, are made to improve the operational clarity of certain provisions in Cap. 155L, and to align them more closely with BCBS capital standards following a recent self-assessment conducted by MA of Cap. 155L against the text of BCBS capital standards as part of the BCBS Regulatory Consistency Assessment Programme, which is an on-going process established by BCBS to assess the extent of compliance of its member jurisdictions with its capital standards.

19. L.N. 128 comes into operation on 1 January 2015.

L.N. 129

20. L.N. 129 is made by MA under section 97H of Cap. 155 after consultation with the Statutory Consultees to prescribe the liquidity requirements for AIs in replacement of the current liquidity ratio requirement under Cap. 155.

21. L.N. 129 provides for two categories of AI, namely, category 1 institution and category 2 institution, each of which has its own set of liquidity requirement. Category 1 institution is one which is designated by MA as such on one or more of the grounds specified in Part 1 or 2 of Schedule 1 to L.N. 129. Such grounds include the AI in question is internationally active or significant to the general stability and effective working of the banking system in Hong Kong or that the liquidity risk associated with it is material. Category 2 institution is an AI that is not a category 1 institution.

22. A category 1 institution is required under L.N. 129 to maintain, at all times, an LCR of not less 100% on and after 1 January 2019. It will start from 2015 at not less than 60% and increase by annual increments of 10% leading up to 100%. LCR is a ratio of the amount of the institution's high quality liquid assets (HQLA) to the amount of the institution's total net cash outflows as calculated in accordance with Parts 4 and 7 of L.N. 129. According to paragraph 6 of the LegCo Brief, such requirement is made to implement the Basel III LCR

requirement which seeks to promote AIs' resilience to short-term liquidity risks by ensuring that they have sufficient HQLA to meet their obligations for at least 30 calendar days under an acute stress scenario.

23. A category 2 institution, on the other hand, is required to maintain a liquidity maintenance ratio (LMR) of not less than 25% on average in each calendar month under L.N. 129. LMR is a ratio of the amount of the institution's liquefiable assets to the amount of the institution's qualifying liabilities (after deductions) as calculated in accordance with Parts 4 and 8 of L.N. 129. As stated in paragraph 7 of the LegCo Brief, such requirement is a modified version of the existing liquidity ratio requirement under Cap. 155 to be applied to AIs with a lesser degree of operational sophistication or systemic importance to the banking sector.

24. L.N. 129 also imposes reporting requirements on AIs and the action that may be taken by MA when notified of certain relevant liquidity events.

25. L.N. 129 comes into operation on 1 January 2015.

Other points

26. Members may refer to the LegCo Brief for further information.

27. HKMA has engaged the banking sector intensively through industry-wide consultation and discussions, meetings and exchanges of correspondence with AIs or industry groups in relation to the implementation and technical aspects of the above proposals, as part of the consultative process in developing L.N. 127 to 129. In August 2014, MA issued draft legislative provisions to consult the Statutory Consultees. According to paragraph 19 of the LegCo Brief, responses indicated support for the direction of the amendments to Cap. 155L and that of L.N. 129. Relevant technical or drafting comments have been addressed in the finalized legislative provisions as appropriate, and the intent of certain provisions has been clarified.

28. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed on the legislative proposals relating to the implementation of Basel III requirements in Hong Kong at the meeting on 7 July 2014. Some members expressed concern about whether additional costs would be incurred on AIs, in particular small and medium-sized institutions, in complying with the Basel III standards. They stressed that Hong Kong should stay on par with other jurisdictions in implementing the requirements to avoid exerting pressure on the operating costs of the Hong Kong banking sector and affecting their competitiveness.

PART III DECLARATION OF HISTORICAL BUILDINGS

Antiquities and Monuments (Declaration of Historical Buildings) Notice 2014

(L.N. 130)

29. L.N.130 is made under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) by the Secretary for Development (the Secretary) as the Authority, after consultation with the Antiquities Advisory Board (AAB) and with the approval of the Chief Executive.

30. The Notice declares the following places to be historical buildings -

- (a) Lin Fa Temple (蓮花宮), also known as Lin Fa Kung, on Lily Street, Tai Hang, Hong Kong;
- (b) Hung Shing Temple (洪聖古廟) on Hung Shing Street, Ap Lei Chau, Hong Kong, together with a pair of timber poles in front of that temple; and
- (c) Hau Wong Temple (侯王古廟) and its adjoining land at the corner of Junction Road and Tung Tau Tsuen Road, Kowloon City, Kowloon, together with a stone with inscription at the rear of that temple (the Temples).

31. The legal effect of the declaration is that the three Temples will become a "monument" for the purposes of Cap. 53 and as such will enjoy the protection under section 6(1) which forbids anyone to excavate, carry on building or other works, plant or fell trees or deposit earth or refuse on or in the monument, or demolish, remove, obstruct, deface or interfere with it except in accordance with a permit granted by the Secretary. Under section 19(2) of Cap. 53, any person who contravenes section 6(1) shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000 and imprisonment for one year.

32. The Antiquities and Monuments Office (AMO)⁷ of the Leisure and Cultural Services Department has researched into and assessed the heritage significance of the three Temples. AMO recommends to the Authority that the Temples have high heritage value that meets the threshold required for declaration as historical buildings under section 3(1) of Cap. 53. Members may refer to paragraphs 4 to 17 of the LegCo Brief issued by the Development Bureau dated 20 October 2014 (no file reference provided) for the heritage value of the three

⁷ AMO is the executive arm of the Antiquities Authority dealing with matters, among others, relating to research, examination and preservation of any place, building, site or structure which is of historical, archaeological or palaeontological value.

Temples.

33. Further according to the LegCo Brief, the three Temples have been accorded with a Grade 1 status (which denotes historical buildings of outstanding merit) by AAB having regard to the recommendations of an independent assessment panel under the existing administrative grading mechanism. AAB has been consulted on the proposed declaration as required under section 3(1) of Cap. 53 and rendered its support. The three Temples are located within private land under the ownership of the Secretary for Home Affairs Incorporated and are administrated by the Chinese Temples Committee. The procedure prescribed under section 4 of Cap. 53 for the Authority to serve a notice on the owner and any lawful occupiers of the Temples of the intended declaration was completed on 13 June 2014. No objection was received by AMO during the one-month notice period. Explicit agreement of the owner of the Temples to the declaration proposal has also been obtained.

34. As advised by the Clerk to the Panel on Development, at the meeting of the Panel on Development on 24 June 2014, the Administration updated members on the progress of its work on heritage conservation, including the intended declaration of three Temples as monuments. Members in general welcomed the provision of statutory protection to buildings of high heritage value. They did not raise any objection to the intended declaration.

35. L.N. 130 does not provide for a commencement date. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), L.N. 130 has commenced on the day it was published in the Gazette, i.e. 24 October 2014.

Concluding Observations

36. The Legal Service Division is still scrutinizing the legal and drafting aspects of L.N. 128 and L.N. 129 and will make a further report if necessary.

37. No difficulties have been identified in relation to the legal or drafting aspects of L.N. 123 to L.N. 127 and L.N. 130.

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