

**立法會**  
***Legislative Council***

LC Paper No. LS18/14-15

**Paper for the House Committee Meeting  
on 5 December 2014**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 28 November 2014**

**Tabling in LegCo** : Council meeting of 3 December 2014

**Amendment to be made by :** Council meeting of 17 December 2014 (or that of 21 January 2015 if extended by resolution)

**Electronic Transactions Ordinance  
(Amendment of Schedule 1) Order 2014**

**(L.N. 141)**

L.N. 141 is made by the Secretary for Commerce and Economic Development under section 50 of the Electronic Transactions Ordinance (Cap. 553) to amend Schedule 1 to the Ordinance.

2. Cap. 553 provides the statutory basis for the conduct of electronic transactions in Hong Kong and, among other things, gives electronic records and electronic signatures the same legal status as that of their paper-based counterparts. However, section 3 provides that certain matters set out in Schedule 1 are excluded from certain provisions of Cap. 553. According to paragraph 2 of the LegCo Brief, such exclusion is a recognition that certain types of transactions would preferably be conducted through conventional paper-based means because of their solemnity, significance or complexity of the transactions, as well as the readiness of the parties involved to handle the related documents in electronic form.

3. According to paragraph 4 of the LegCo Brief, in view of the increasing popularity of Internet banking, Hong Kong Monetary Authority (HKMA) and the banking sector plan to introduce e-cheque as an alternative payment method. According to paragraph 5 of the LegCo Brief, e-cheque is an electronic counter-part of paper cheque. The proposed operating model of e-cheque is summarised in Annex B of the LegCo Brief.

4. As item 13 of Schedule 1 excludes negotiable instruments from the application of certain provision of Cap. 553 by virtue of section 3, the Administration considers it necessary to amend Schedule 1 to Cap. 553 in order to allow e-cheque to carry the same statutory effect as paper-based cheque. L.N. 141 repeals item 13 to Schedule 1 and replaces it with "negotiable instruments (but excluding cheques that bear the words "not negotiable")". The effect is that non-negotiable e-cheques may be transacted and cleared electronically. According to paragraph 5 of the LegCo Brief, only non-negotiable e-cheques are covered because of limited usage of negotiable cheques.

5. Members may refer to the LegCo Brief (File Ref: GCIO 107/4/3 XXIV) issued by the Office of the Government Chief Information Officer, Commerce and Economic Development Bureau in November 2014 for background information.

6. As advised by the Clerk to the Panel on Information Technology and Broadcasting, at the meeting of the Panel held on 10 November 2014, the Administration briefed members on its proposal to amend Schedule 1 to Cap. 553 to give non-negotiable e-cheque the same legal status as paper cheque. While the Panel supported in principle the Administration's proposed legislative amendment, some members expressed concern whether bank customers who were unfamiliar with the use of e-cheque would be forced to accept this payment method. These members opined that public education should be formulated to promote the use of e-cheque. HKMA should also collaborate with the Hong Kong Association of Banks to prepare clear guidelines for the banking sector regarding bank customers' right to choose payment methods that suited transaction circumstances.

7. L.N. 141 comes into operation on 1 April 2015.

### **Employees Retraining Ordinance**

#### **(Amendment of Schedule 2) Notice 2014**

**(L.N. 142)**

8. L.N. 142 is made by the Employees Retraining Board under section 31(2) of the Employees Retraining Ordinance (Cap. 423) to amend Schedule 2 to Cap. 423, which specifies the training bodies that may provide or conduct retraining courses for the purposes of Cap. 423. Such training bodies are eligible to payment from the Employees Retraining Fund for retraining courses attended by eligible trainees.

9. L.N. 142 amends Schedule 2 to Cap. 423 –

- (a) by adding four training bodies;
- (b) by deleting 17 training bodies; and
- (c) by revising the name of one training body.

10. L.N. 142 comes into operation on its publication in the Gazette (i.e. 28 November 2014).

11. Members may refer to the LegCo Brief (File Ref: QA/TBM/09 Part 3) issued by the Employees Retraining Board Executive Office dated 25 November 2014 for background information including the reasons for updating the training bodies in Schedule 2 (paragraphs 8 to 11).

12. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 142.

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

### **United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2014**

**(L.N. 143)**

13. L.N. 143 is 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 People's Republic of China and after consultation with the Executive Council to amend the United Nations Sanctions (Libya) Regulation 2011 (Cap. 537AW).

14. Concerned with serious violation of human rights and attacks against civilians, the United Nations Security Council (UNSC) adopted Resolution 1970 on 26 February 2011, which were subsequently modified by Resolutions 1973 (adopted on 17 March 2011), 2009 (adopted on 16 September 2011), 2016 (adopted on 27 October 2011), and 2095 (adopted on 14 March 2013), to impose various sanctions including arms embargo, prohibition of the provision of certain assistance and training, procurement of arms, travel ban on certain individuals, financial sanctions against certain persons and entities and ban of flights.

15. On 19 March 2014, having expressed concern that the illicit export of crude oil from Libya undermines the Government of Libya and poses a threat to the peace, security and stability of Libya and determined the situation in Libya

continues to constitute a threat to international peace and security, UNSC adopted Resolution 2146 to expand the scope of sanctions against Libya. The measures authorized by Resolution shall terminate one year from 19 March 2014 unless extended by UNSC.

16. On 27 August 2014, having expressed concern of the growing presence of Al-Qaida linked terrorists groups and individuals operating in Libya, UNSC adopted Resolution 2174 to expand the scope of certain sanctions to individuals and entities determined by a Committee established under Resolution 1970 to be engaging in or providing support for other acts that threatened the peace, stability or security of Libya, or obstruct or undermine the successful completion of Libyan political transition.

17. L.N. 143 is made to give effect to Resolutions 2146 and 2174 by –

- (a) providing for the prohibitions against –
  - (i) the loading, transport or discharge of crude oil from Libya aboard certain ships;
  - (ii) engaging in any financial transaction related to any crude oil from Libya aboard certain ships;
  - (iii) the provision of certain services to ships under certain circumstances; and
  - (iv) certain ships from entering the waters of Hong Kong;
- (b) amending the licensing requirements for the supply, sale, transfer or carriage of certain goods;
- (c) extending to additional persons and entities the prohibitions against –
  - (i) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources; and
  - (ii) dealing with any funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (d) extending to additional persons the prohibition against the entry into or transit through Hong Kong.

18. L.N. 143 comes into operation on its publication in the Gazette (i.e. 28 November 2014). Sections 3A, 3B, 7A, 7B, 10A, 10B and 10C, as well as the definition of "Resolution 2146" in section 2 introduced by L.N. 143 in relation to Resolution 2146 will expire at midnight on 18 March 2015.

19. 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 section 3 of Cap. 537. Accordingly, L.N. 143 is not required to be tabled in the Legislative Council and is not subject to amendment by the Legislative Council. However, since L.N. 143 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 (the Subcommittee), Members may consider referring it to the Subcommittee for its consideration.

20. According to the Clerk to the Subcommittee, the Legislative Council Brief (File Ref: CITB CR 95/53/1) on the captioned Regulation has been circulated to members of the Subcommittee and all other Hon Members vide LC Paper No. CB(1)314/14-15 on 2 December 2014. Members may refer to the LegCo Brief issued by the Commerce and Economic Development Bureau in November 2014 (File Ref: CITB CR 95/53/1) for further information.

### **Concluding Observations**

21. No difficulties have been identified in relation to the legal or drafting aspects of L.N. 141 and L.N. 142.

22. The Legal Service Division is making enquires with the Administration in relation to a drafting aspect of L.N. 143 and will report further if necessary.

Prepared by

Kelvin Ka-yun LEE  
Assistant Legal Adviser  
Legislative Council Secretariat  
3 December 2014