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**Paper for the House Committee Meeting  
on 12 June 2015**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 5 June 2015**

**Tabling in LegCo** : Council meeting of 10 June 2015

**Amendment to be made by** : Council meeting of 8 July 2015 (or the first meeting of the next session if extended by resolution)

**PART I REGULATIONS RELATING TO CONTROL REGIME FOR THE  
IMPORT OF EGGS**

**Import and Export (General) (Amendment)  
Regulation 2015** (L.N. 105)

**Imported Game, Meat and Poultry (Amendment)  
Regulation 2015** (L.N. 106)

**Food Business (Amendment) Regulation 2015** (L.N. 107)

Background

According to the Administration, over 99% of eggs in Hong Kong are imported. Further, according to the World Health Organization, eggs from infected birds could be contaminated with Avian Influenza. However, there is currently no specific legislation to regulate the import of eggs into Hong Kong.

L.N. 106

2. The main purpose of L.N. 106 which is made by the Secretary for Food and Health under section 55 of the Public Health and Municipal Services Ordinance (Cap. 132) is to amend the Imported Game, Meat and Poultry Regulations

(Cap. 132AK) to introduce a statutory control regime for the import of eggs<sup>1</sup>. Under the new statutory control regime<sup>2</sup>, no person shall import eggs into Hong Kong—

- (a) without a health certificate<sup>3</sup> issued by an issuing entity of the place of origin<sup>4</sup> of eggs recognized by the Director of Food and Environmental Hygiene (DFEH) to examine articles of food and certify that the eggs are fit for human consumption;
- (b) where they have been transhipped, subject to specified exception, without a transshipment certificate showing that they were properly imported into the place outside Hong Kong where they were unloaded and did not suffer any spoilage or deterioration during their stay there;
- (c) without having obtained a permission in writing of a health officer of the Food and Environmental Hygiene Department that the officer may give for the purposes of the new regulation 4(1)(ab); and
- (d) without having complied with such conditions as a health officer for the purposes of the new regulation 4(1)(ab) (sections 5, 6 and 7(5)).

3. To reflect the expanded scope of the existing Cap. 132AK to also cover eggs, L.N. 106 amends its title and citation to become "Imported Game, Meat, Poultry and Eggs Regulations" (sections 3 and 4).

4. L.N. 106 also provides for the necessary transitional arrangements arising from the amendments made to Cap. 132AK (section 13).

5. It is noted that the requirements set out in the new regulation 4(1)(ab)(iii) and (iv) of Cap. 132AK, namely a permission in writing of a health officer and compliance with such conditions as a health officer may impose are in relation to

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<sup>1</sup> Under L.N. 106, "eggs" means an egg of a bird belonging to a type of bird sold or offered for sale for human consumption or any edible part of such an egg whether such an egg or edible part is shelled or unshelled, raw or partially cooked, salted, preserved or otherwise processed, in frozen, liquid or dried form or contains any functional ingredient but excludes such an egg or edible part that is fully cooked or constitutes one of the ingredients of any compound food. "Functional ingredient" in relation to any food, is defined as "an ingredient that is added to the food to affect the nutritional value, keeping qualities, texture, consistency, appearance, taste, odour, alkalinity or acidity of the food or to serve any other technological function in relation to the food. "Compound food" is defined as "food containing 2 or more ingredients other than functional ingredients."

<sup>2</sup> Section 7(5) of L.N. 106 adds the new regulation 4(1)(ab) of Cap. 132AK.

<sup>3</sup> The term "official certificate" in Cap. 132AK is replaced by the term "health certificate", added by section 5(5) of L.N. 106 to regulation 2 of Cap. 132AK, which means, in relation to eggs, a certificate issued by an issuing entity of the place of origin of eggs, showing that the eggs to which it relates were inspected, found to be fit for human consumption and packed under sanitary conditions.

<sup>4</sup> The term "country of origin" in Cap. 132AK is replaced by the term "place of origin", added by section 5(5) of L.N. 106 to regulation 2 of Cap. 132AK, which means, in relation to eggs, the place where the eggs were packed or processed.

import of eggs only<sup>5</sup>. The requirements in the new regulations 4(1)(ab)(iii) and (iv) and 4(2A) of Cap. 132AK are not found in relation to the import of meat or poultry under Cap. 132AK. Upon enquiry, the Administration indicated that in the case of meat and poultry, similar restrictions are already imposed through the import licensing system under the Import and Export Ordinance (Cap. 60) whereby an import licence is required for the import of meat and poultry. It is, however, noted that the levels of penalty for contravention of regulation 4(1) of Cap. 132AK (under regulation 7(3), a fine of \$50,000 and imprisonment for 6 months) and the import of, for example, meat and poultry without an import licence under Cap. 60 (under section 6C, a fine of \$500,000 and imprisonment for 2 years) are different. According to the LegCo Brief referred to in paragraph 8 below, the Administration is mindful of the different levels of penalty under Cap. 132AK and Cap. 60 and would separately conduct a comprehensive review of the food safety-related penalties under Cap. 132 and its subsidiary legislation, as well as the Food Safety Ordinance (Cap. 612).

#### L.N. 105

6. The main purpose of L.N. 105 which is made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60) is to amend regulation 6(1)(ca)(iv) of the Import and Export (General) Regulations (Cap. 60A) to replace "official certificate" with "health certificate", as a result of the relevant amendment to Cap. 132AK under L.N. 106 (section 3). It also provides for the necessary transitional arrangements arising from the amendments made to Cap. 60A (section 4).

#### L.N. 107

7. L.N. 107 is made by DFEH under section 56 of Cap. 132 to amend item 2 of Schedule 1 to the Food Business Regulation (Cap. 132X) by amending the reference made to the title of Cap. 132AK to "Imported Game, Meat, Poultry and Eggs Regulations", as a result of the relevant amendment made to Cap. 132AK under L.N. 106.

8. For the above three items of subsidiary legislation, members may refer to the LegCo Brief (File Ref: FH CR 2/3821/06) issued by the Food and Health Bureau in June 2015 for background information.

#### Public consultation

9. As stated in paragraph 18 of the LegCo Brief, since December 2010, the Administration has consulted Consulates-General, Mainland authorities, and importers of game, poultry and eggs. The latest round of consultation for Consulates-

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<sup>5</sup> Section 7(8) of L.N. 106 adds the new regulation 4(2A) to Cap. 132AK to specify the information as may be required by the health officer before the officer may give a permission under the new regulation 4(1)(ab)(iii).

General and the trade was conducted in April 2015. They generally supported the proposal to introduce statutory import control on eggs.

### Consultation with LegCo

10. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel was consulted at its meetings on 17 May and 12 July 2011 on the Administration's legislative proposal to extend the import control regime for meat and poultry under Cap. 132AK and Cap. 60 to cover poultry eggs. Some members were concerned about the definition of poultry eggs in the proposed regulation which did not cover powdered eggs, cooked eggs, and pasteurized frozen or liquid eggs (including liquid egg white and egg yolks). Some other members expressed concerns about the possible impact of the proposed regulation on trading costs and requested the Administration to consider engaging a consultant to assess the impact of the proposed regulation on the affected trades.

11. L.N.s 105, 106 and 107 come into operation on 5 December 2015.

## **PART II REGULATION RELATING TO MERCHANT SHIPPING**

### **Merchant Shipping (Prevention of Pollution by Sewage) (Amendment) Regulation 2015**

**(L.N. 108)**

#### Background

12. L.N. 108 is made by the Secretary for Transport and Housing (the Secretary) under section 3 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) to incorporate the latest international requirements in Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413K) in view of the revisions made to Annex IV to the International Convention for the Prevention of Pollution from Ships, 1973 (Annex IV to the Convention) over the years. Members may refer to LegCo Brief (File Ref: THB(1)PML 8/10/90/9) dated 3 June 2015 issued by the Transport and Housing Bureau for background information.

13. Cap. 413K governs the discharge of sewage from ships. Apart from some exceptions, Cap. 413K applies to a ship that—

- (a) is engaged in international voyages;
- (b) is of 400 gross tonnage or above, or is of less than 400 gross tonnage but is certified to carry more than 15 persons; and
- (c) is-

- (i) a Hong Kong ship wherever it may be; or
- (ii) a non-Hong Kong ship within the waters of Hong Kong.<sup>6</sup>

14. A ship to which Cap. 413K applies shall not be engaged in international voyages unless there is in force in respect of the ship an ISPP Certificate.<sup>7</sup> ISPP Certificate means—

- (a) in relation to a Hong Kong ship-
  - (i) a sewage certificate<sup>8</sup>;
  - (ii) an International Sewage Pollution Prevention Certificate issued by a recognized organization in conformity with Annex IV to the Convention; or
  - (iii) an International Sewage Pollution Prevention Certificate issued by any Convention country on behalf of the Director of Marine (the Director) in respect of a Hong Kong ship in conformity with Annex IV to the Convention; or
- (b) in relation to a non-Hong Kong ship, an International Sewage Pollution Prevention Certificate issued in conformity with Annex IV to the Convention.

#### Major amendments

15. Annex IV to the Convention has stipulated the effluent standards required of sewage treatment plant installed on ships. Cap. 413K prohibits a ship to discharge sewage into the sea unless—

- (a) the ship is equipped with a sewage treatment plant that is in compliance with the effluent standards adopted by the International Maritime Organization (IMO);
- (b) the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land<sup>9</sup> while the ship is proceeding en route at not less than four knots ; or

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<sup>6</sup> Section 3 of Cap. 413K.

<sup>7</sup> Section 8 of Cap. 413K.

<sup>8</sup> Section 2 of Cap. 413K defines "sewage certificate" to mean a an International Sewage Pollution Prevention Certificate issued by the Director of Marine under section 9 of Cap. 413K.

<sup>9</sup> According to footnote 3 of the LegCo Brief, "Nearest land" means, in general, the baseline from which the territorial sea of the territory in question is established in accordance with the international law. On this basis, for China, its nearest land is beyond Hong Kong waters.

- (c) for sewage that is not comminuted or disinfected, it is discharged at a distance of more than 12 nautical miles from the nearest land while the ship is proceeding en route at not less than four knots.<sup>10</sup>

16. Section 23 of L.N. 108 amends section 28 of Cap. 413K to update the restrictions on discharge of sewage into the sea in accordance with Annex IV to the Convention. The amended section 28(1)(c) and amended section 1(a) of the Schedule<sup>11</sup> require a ship in operation a sewage treatment plant to comply with the applicable effluent standards adopted by the IMO for sewage treatment plants. The amended section 28(1)(a) and (b), and the new section 28(3) tighten control by requiring discharges referred to in paragraph 15(b) and (c) above, from specified ships, which are from holding tanks or spaces containing living animals be made at a moderate rate<sup>12</sup> as derived from a formula adopted by the IMO.

17. At present, the Director may only issue an International Sewage Pollution Prevention Certificate to a Hong Kong ship<sup>13</sup> or endorse its existing ISPP Certificate after satisfactory completion of a survey<sup>14</sup>. New section 6A is added to empower the Director, at the request of any Convention country, to cause a non-Hong Kong ship that is within the waters of Hong Kong, to be surveyed, issue a sewage certificate in respect of the ship and endorse on an ISPP Certificate in conformity with Annex IV to the Convention.

18. Section 24 of L.N. 108 adds the new section 29A under the new Part 5A to Cap. 413K to provide Government surveyors with general powers to inspect and examine ships. Section 25 of L.N. 108 adds the new section 29B to Cap. 413K to deal with the obstruction of, and non-compliance with the requirements imposed by Government surveyors in their exercising the power under the new section 29A.

### Application of Direct Reference Approach

19. Section 3A of Cap. 413 provides that for the purpose of giving effect to any provisions of any international agreements applicable to Hong Kong as in force from time to time; and so far as the agreement relates to any matter for or in relation to which provision may be made by regulations made under Cap. 413, any such regulations may set out or refer to those provisions and specify modifications subject to which those provisions shall have effect (Direct Reference Approach (DRA)). Paragraph 10 of the LegCo Brief sets out the factors to be taken into account when

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<sup>10</sup> Section 28 of Cap. 413K.

<sup>11</sup> Section 27(2) of L.N. 108.

<sup>12</sup> The new section 28(2) provides that "moderate rate" means the rate which is derived in accordance with the recommendation on standards for discharge of sewage from ships adopted by the International Maritime Organization.

<sup>13</sup> Section 9(1) of Cap. 413K.

<sup>14</sup> Section 14(b) of Cap. 413K.

adopting DRA. Annex B to the LegCo Brief contains the provisions of L.N. 108, against the aforesaid factors, identified by the Administration to be suitable for the application of DRA.

### Public consultation

20. According to paragraph 15 of the LegCo Brief, the Shipping Consultative Committee was consulted and it raised no objection to the proposal.

### Consultation with LegCo

21. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel at the meeting held on 16 December 2014 on, among others, proposed amendments to Cap. 413K. Members noted that Cap. 413K sought to implement Annex IV to the Convention. They supported early incorporation of the international convention in local legislation in order to conserve the marine environment and ensure harbour safety with a view to enhancing Hong Kong's status as an international maritime centre.

22. L.N. 108 comes into operation on 1 November 2015.

## **PART III RULES RELATING TO THE COMPETITION TRIBUNAL**

**Competition Tribunal Rules** (L.N. 109)

**Competition Tribunal Fees Rules** (L.N. 110)

**Competition Tribunal Suitors' Funds Rules** (L.N. 111)

**Rules of the High Court (Amendment) Rules 2015** (L.N. 112)

### Background

23. The Competition Ordinance (Cap. 619), which was enacted in June 2012 and subsequently amended in 2014, provides for prohibitions against conduct that prevents, restricts or distorts competition in Hong Kong and for the establishment of the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal). Since the enactment of Cap. 619, the Administration and the Judiciary have been working on its phased implementation. Provisions in Cap. 619 relating to the Tribunal commenced on 1 August 2013<sup>15</sup>, and the President and Deputy President of the Tribunal were appointed on the same day.

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<sup>15</sup> See the Competition Ordinance (Commencement) Notice 2012 (L.N. 177 of 2012) published in the Gazette on 23 November 2012 and the Report of the Subcommittee on Competition Ordinance (Commencement) Notice 2012 dated 3 January 2013 (LC Paper No. CB(1)354/12-13).

L.N. 109

24. L.N. 109 is made by the Chief Judge, after consulting the President of the Tribunal, under section 158 of Cap. 619. It provides for the practices and procedures of the Tribunal which include the following matters:-

- (a) procedures applicable to proceedings before the Tribunal, including procedures for commencement of proceedings, service of documents, application for intervention by a person having sufficient interest in the proceedings, discovery and inspection of documents, case management, right of audience, taking of evidence, disposal of proceedings, confidential treatment of certain information, jurisdiction and duties of the Registrar of the Tribunal (Part 2 of L.N. 109);
- (b) applications for the review of the Commission's reviewable determinations under Part 5 of Cap. 619 (Part 3 of L.N. 109);
- (c) applications for enforcement before the Tribunal for contravention of the competition rules, including the application for disqualification orders against certain persons (Part 4 of L.N. 109);
- (d) applications for follow-on action under section 110 of Cap. 619 against any person who has been determined by the Tribunal as having contravened a conduct rule (Part 5 of L.N. 109);
- (e) procedures for transferring the proceedings from CFI to the Tribunal and effects of such transfer (Part 6 of L.N. 109); and
- (f) forms for applications under Cap. 619 or L.N. 109 (Schedule to L.N. 109).

25. According to paragraphs 7 to 10 of the LegCo Brief (File Ref: SC/CR/19/1/11) issued by the Judiciary Administration in June 2015, in preparing L.N. 109, the Judiciary has made reference not only to the Rules of the High Court (Cap. 4A) (RHC), but also the rules and procedures of other relevant courts and tribunals in the Judiciary that have informal procedures. The Judiciary has also taken into account the rules and practices applicable to similar proceedings in other relevant common law jurisdictions<sup>16</sup>. The Judiciary has adopted the practice under RHC, with suitable modifications, for the purpose of the Tribunal where appropriate. To avoid reproducing all the relevant provisions of RHC in L.N. 109, the Judiciary has made a general provision in rule 4 of L.N. 109 indicating that where there is no provision in Cap. 619 and L.N. 109 for a matter, RHC would apply to all proceedings before the

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<sup>16</sup> These common law jurisdictions include the United Kingdom, Australia and Canada.



Tribunal, so far as they may be applicable to that matter. Members may refer to the LegCo Brief for further information.

#### L.N. 110

26. L.N. 110 is made by the Chief Judge, after consulting the President of the Tribunal, under section 158 of Cap. 619 to prescribe the fees payable in connection with the applications to the Tribunal and proceedings in the Tribunal. Rule 3 read together with Schedule 1 to L.N. 110 specifies the fees payable to the Registrar of the Tribunal (the Registrar) by making reference to the corresponding fees specified in the High Court Fees Rules (Cap. 4D). The effect is that the fees for similar matters or items in the High Court and the Tribunal are standardized at the same levels. Schedule 2 to L.N. 110 specifies the fees payable to the Registrar in relation to other items without making reference to the fee items under Cap. 4D.

#### L.N. 111

27. L.N. 111 is made by the Chief Judge, after consulting the President of the Tribunal, under section 158A of Cap. 619 for the administration of the suitors' funds<sup>17</sup> kept by the Tribunal. It provides for the main duties of the Registrar in relation to funds lodged with the Registrar at an account called the "Competition Tribunal Suitors' Funds Account", including giving receipts, keeping records of the funds lodged and preparing annual statement of the accounts. It also governs the payment of the funds out of the Tribunal, investment of the funds by the Registrar, and crediting of interest to individual accounts. According to paragraphs 25 and 26 of the LegCo Brief, L.N. 111 is modelled on the High Court Suitors' Funds Rules (Cap. 4B). It seeks to govern the administration of suitors' funds of the Tribunal in a way similar to that of the High Court.

#### L.N. 112

28. L.N. 112 is made by the Rules Committee of the High Court (the Rules Committee) under section 54 of the High Court Ordinance (Cap. 4) to amend RHC to provide for the procedures for (a) the transfer of proceedings under Cap. 619 (transfer from the Court of First Instance to the Tribunal or vice versa) and (b) applications for leave to appeal from the Tribunal or the Registrar to the Court of Appeal.

#### Commencement of L.N. 109 to L.N. 112

29. L.N. 109, L.N. 110 and L.N. 111 come into operation on a day to be appointed by the Chief Judge by notice published in the Gazette. L.N. 112 comes

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<sup>17</sup> Suitors are parties to law suits in a court of law. They may need to pay or transfer funds into the Tribunal or deposit funds in the Tribunal for various purposes, e.g. as security for legal costs, for satisfaction of claims or judgment debts in the law suits, etc.

into operation on a day to be appointed by the Rules Committee by notice published in the Gazette.

Recommendation of the Subcommittee to Study the Proposed Subsidiary Legislation on the Procedures to be Adopted by the Competition Tribunal

30. Members may recall that at the meeting of the House Committee (HC) held on 27 February 2015, Members agreed to form a subcommittee to study four sets of draft procedural and fees rules of the Tribunal (the Draft Rules) so as to allow sufficient time for Members to scrutinize them before they are gazetted and laid on the table of the Council under the negative vetting procedure. The Subcommittee to Study the Proposed Subsidiary Legislation on the Procedures to be Adopted by the Competition Tribunal (the Subcommittee) completed scrutiny of the Draft Rules and submitted its report to HC on 22 May 2015. As the Judiciary and the Department of Justice have incorporated all the suggestions put forward by the Subcommittee, and the Subcommittee has no further comments on the legal and drafting aspects of the proposed amendments to the Draft Rules, a great majority of members of the Subcommittee agreed that there is no need for HC to form a subcommittee to scrutinize the four sets of subsidiary legislation on the procedures to be adopted by the Tribunal again after they are laid on the table of LegCo for negative vetting. Members may refer to the Subcommittee's Report (LC Paper No. CB(4)1016/14-15) for further details. It is noted that all the amendments suggested by the Subcommittee have been incorporated in L.N. 109 to L.N. 112.

**PART IV NOTICES RELATING TO INCREASE IN PENSION**

**Declaration of Increase in Pensions Notice 2015 (L.N. 113)**

**Widows and Orphans Pension (Increase) Notice 2015 (L.N. 114)**

31. L.N. 113 is made under section 4(1B) of the Pensions (Increase) Ordinance (Cap. 305) to declare, with effect from 1 April 2015, a 6.1% increase in the basic pension payable to ex-officers and dependants eligible for pension under various pension Ordinances<sup>18</sup> as specified in Schedule 1 to Cap. 305.

32. L.N. 114 is made under section 3(3) of the Widows and Orphans Pension (Increase) Ordinance (Cap. 205) to specify, with effect from 1 April 2015, a 6.1% increase in the pensions payable to widows and orphans of officers under the Widows and Orphans Pension Ordinance (Cap. 94).

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<sup>18</sup> Auxiliary Forces Pay and Allowances Ordinance (Cap. 254), Pensions Ordinance (Cap. 89), Pension Benefits Ordinance (Cap. 99), Pension Benefits (Judicial Officers) Ordinance (Cap. 401), Police Force Ordinance 1932 (37 of 1932), Police Officers (Special Cases) Pensions Ordinance 1954 (21 of 1954) and Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

33. Under section 4 of Cap. 305 and section 3 of Cap. 205, if the average monthly Consumer Price Index (A) (average index) (CPI(A)) of a period of 12 months ending on 31 March of a year exceeds the average index of the immediately preceding 12 months by more than 0.1%, the Chief Executive shall declare or specify a percentage of increase in the relevant pensions equal to the excess expressed as a percentage as soon as practicable by notice in the Gazette.

34. Paragraph 4 of the LegCo Brief (File Ref: CSBCR/AP/4-075-005/5 Pt. 18) issued by the Civil Service Bureau on 3 June 2015 shows that the average index for the 12 months that ended on 31 March 2015 exceeds that of the immediately preceding 12 months by 6.1%. Pursuant to Cap. 305 and Cap. 205, L.N. 113 and L.N. 114 are made to declare and specify a 6.1% increase in the relevant pensions. Further, the effective date of 1 April 2015 specified in L.N. 113 and L.N. 114 is in accordance with the usual practice, adopted administratively since 1982, of effecting a pension increase from 1 April of a year.

35. According to paragraph 8 of the LegCo Brief, no consultation with pensioners and dependants is required as pension increase in accordance with increase in CPI(A) is a statutory entitlement for pensioners and dependants, and L.N. 113 and L.N. 114 are made in accordance with the relevant statutory provisions as well as established policy and procedures. Members may refer to the LegCo Brief for background and further information.

36. As advised by the Clerk to the Panel on Public Service, the Panel has not been consulted on L.N. 113 and L.N. 114.

## **PART V COMMENCEMENT NOTICES**

**Allowances to Jurors (Amendment) Order 2015  
(Commencement) Notice** (L.N. 115)

**Criminal Procedure (Witnesses' Allowances) (Amendment)  
Rules 2015 (Commencement) Notice** (L.N. 116)

**Coroners (Witnesses' Allowances) (Amendment) Rules  
2015 (Commencement) Notice** (L.N. 117)

### L.N. 115

37. By L.N. 115, the Chief Justice appoints 17 July 2015 as the day on which the Allowances to Jurors (Amendment) Order 2015 (L.N. 29 of 2015) comes into operation. L.N. 29 of 2015, which was gazetted on 6 February 2015, amends the Allowances to Jurors Order (Cap. 3A) to increase the allowance and the maximum

rate of additional allowance payable to jurors in criminal or civil cases or in inquests under the Coroners Ordinance (Cap. 504) from \$410 to \$725 a day (or part of a day).

L.N. 116 and L.N. 117

38. By L.N. 116 and L.N. 117, the Chief Justice appoints 17 July 2015 as the day on which the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 2015 (L.N. 59 of 2015) and the Coroners (Witnesses' Allowances) (Amendment) Rules 2015 (L.N. 61 of 2015) (collectively referred to as "Amendment Rules") come into operation.

39. The Amendment Rules were approved by the Legislative Council at its meeting on 18 March 2015 pursuant to a motion moved by the Chief Secretary for Administration. They increase the maximum rates of allowances payable to witnesses in criminal proceedings under the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221B) and coroners' inquests under the Coroners (Witnesses' Allowances) Rules (Cap. 504E) respectively as follows:-

- (a) ordinary witnesses from \$410 to \$445 (a day) and \$205 to \$220 (not exceeding four hours); and
- (b) expert/professional witnesses from \$2,355 to \$2,415 (a day) and \$1,175 to \$1,205 (not exceeding four hours).

40. There is no LegCo Brief issued on L.N. 115 to L.N.117 (the three Commencement Notices).

41. The Clerk to the Panel on Administration of Justice and Legal Services (the Panel) has advised that at its meeting held on 24 November 2014, the Panel did not raise any query on an information paper submitted by the Judiciary Administration on the proposed revisions to the rates of allowances for jurors and witnesses on the basis of the movement of the relevant adjustment indicators between the second quarter of 2012 and the second quarter of 2014. The Panel has not been consulted on the three Commencement Notices.

**Contracts (Rights of Third Parties) Ordinance  
(Commencement) Notice**

**(L.N. 118)**

42. By L.N. 118, the Secretary for Justice appoints 1 January 2016 as the day on which the Contracts (Rights of Third Parties) Ordinance (17 of 2014) (the Ordinance) comes into operation.

43. The Ordinance was enacted in December 2014. The object of the Ordinance is to enable a person who is not a party to a contract (i.e. a third party) to

enforce a term of the contract under certain circumstances. Under the Ordinance, a third party who is not a party to the contract may enforce a term of a contract if (a) the contract expressly provides that the third party may do so, or (b) the contract contains a term which purports to confer a benefit on the third party (even if the third party is not in existence when the contract is entered into), unless on a proper construction of the contract, the term is not intended to be enforceable by the third party (the two-limb test of enforceability). The new statutory scheme under the Ordinance only applies to contracts entered into on or after the Ordinance comes into operation.

44. As advised by the Clerk to the Bills Committee on the Contracts (Rights of Third Parties) Bill, during the scrutiny of the Bill, the Bills Committee suggested that guidelines and standard forms of contractual provisions should be developed for contracting parties to facilitate their understanding about the operation of the two-limb test of enforceability under the Bill. The Administration did not see the need to do so, as contracting parties should be in the best position to ensure the contract was drafted in a way that fully reflected the intention of the contracting parties, taking into account all relevant considerations and seeking legal advice as necessary. Nevertheless, the Administration would step up publicity efforts in this regard with a view to assisting the general public and various stakeholders in preparing for the implementation of the Bill. The Administration agreed to consider the feasibility of bringing the new legislative regime into operation one year after the passage of the Bill. Members may refer to the Bills Committee's report (LC Paper No. CB(4)145/14-15) for further details.

45. There is no LegCo Brief issued on L.N. 118.

46. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 118.

### **Concluding Observations**

47. The Legal Service Division is making enquires with the Administration in relation to legal and drafting aspects of L.N. 108 and will report further if necessary. No difficulties have been identified in the legal and drafting aspects of the other items of subsidiary legislation.

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