

# 立法會

## *Legislative Council*

LC Paper No. LS83/14-15

### **Paper for the House Committee Meeting on 9 October 2015**

### **Legal Service Division Report on Subsidiary Legislation gazetted between 3 July and 25 September 2015**

#### Purpose

This paper annexes six Legal Service Division (LSD)'s reports (the Reports) on subsidiary legislation gazetted between 3 July and 25 September 2015 for consideration by the House Committee and highlights certain items of subsidiary legislation for Members' particular attention.

#### Subsidiary legislation gazetted between 3 July and 25 September 2015

2. The Reports have been separately submitted to Members vide LC Paper Nos. LS76/14-15 to LS80/14-15 and LS82/14-15. The Reports cover two groups of subsidiary legislation as follows -

- (a) 25 items gazetted on 3 July 2015 (L.N. 130 to L.N. 154) which were tabled in the Legislative Council (LegCo) on 8 July 2015 (**Annex A**); and
- (b) 26 items gazetted between 17 July and 25 September 2015 (L.N. 155 to L.N. 169 and L.N. 172 to L.N. 182) of which 20 items will be tabled on 14 October 2015 and the remaining six items are not required to be tabled (**Annex B**).

3. In accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), LegCo may amend the items of subsidiary legislation tabled on 8 July 2015 by the Council meeting of **28 October 2015** (or by that of 18 November 2015 if extended by resolution), and the items to be tabled on 14 October 2015 by the Council meeting of **11 November 2015** (or by that of 2 December 2015 if extended by resolution) respectively.

4. Members will note that the Reports include six items of subsidiary legislation to which section 34 of Cap. 1 does not apply and are therefore not required to be tabled and not subject to amendment by LegCo. Part II of **Annex B** sets out these six items of subsidiary legislation for Members' easy reference.

Items for particular attention

5. Members may wish to pay particular attention to the following items of subsidiary legislation -

- (a) Live Television Link (Witnesses outside Hong Kong) Rules (L.N. 145)

Rules of the High Court (Amendment) (No. 2) Rules 2015 (L.N. 146)

L.N. 145 and L.N. 146 are respectively made by the Chief Judge under section 79L of the Criminal Procedure Ordinance (Cap. 221) and the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) to provide for the rules and procedures in relation to the giving of evidence to courts (including the District Court and a magistrates' court) by way of live television link. In response to LSD's enquiries on the time taken for the making of L.N. 145 and L.N. 146 of 2015 since the enactment of the Evidence (Miscellaneous Amendments) Ordinance 2003 (Ord. No. 23 of 2003), the Administration explained that owing to the technical nature of the rules and the time taken to consult relevant parties (including The Law Society of Hong Kong, the Judiciary Administrator and other enforcement agencies), the preparation of the rules has taken longer than expected.

- (b) United Nations Sanctions (Yemen) Regulation 2015 (L.N. 166)

United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2015 (L.N. 167)

United Nations Sanctions (Côte d'Ivoire) Regulation 2015 (L.N. 168)

These three Regulations are 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 the People's Republic of China and after consultation with the Executive Council. Although these Regulations are not required to be tabled before LegCo and are not subject to amendment by LegCo pursuant to section 3(5) of Cap. 537, 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. Members may consider referring them to

the Subcommittee for its consideration. These Regulations were circulated to members of the Subcommittee on 20 July 2015.

(c) Trainee Solicitors (Amendment) Rules 2015 (L.N. 174)

L.N. 174 is made by the Council of The Law Society of Hong Kong (the Law Society) under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. L.N. 174 amends rule 14 of the Trainee Solicitors Rules (Cap. 159J) to add The Chinese University of Hong Kong (CUHK) as one of the recognized institutions by which a certificate or notification issued in respect of the examination results shall be sufficient evidence of a person's satisfactory completion of the Postgraduate Certificate in Laws (PCLL). LSD has written to the Law Society for a more detailed LegCo Brief on L.N. 174 and for clarification on certain issues. The Law Society had issued a revised LegCo Brief (with no file reference), which was circulated to Members on 5 October 2015. The Law Society has also clarified that -

- (i) the reason for amending rule 14 is to bring it in line with the definition of PCLL under section 2(1) of Cap. 159, which was amended in 2008 by including PCLL awarded by CUHK<sup>1</sup>; and
- (ii) as the definition of PCLL under section 2(1) of Cap. 159 includes PCLL awarded by CUHK, omission of the name of CUHK from the existing rule 14 of Cap. 159J<sup>2</sup> has not precluded the Law Society from admitting the certificates of completion of PCLL issued by CUHK as evidence under rule 14 and registering the trainee solicitor contracts of those CUHK PCLL graduates since 2009 whereby they might gain admission as solicitors under Cap. 159.

With the above clarification made by the Law Society, LSD considers that the legal and drafting aspects of L.N. 174 present no difficulties.

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<sup>1</sup> The definition of PCLL was amended by section 34 of the Statute Law (Miscellaneous Provisions) Ordinance (No. 10 of 2008).

<sup>2</sup> Rule 14 of Cap. 159J provides that "[a] certificate or notification issued by or on behalf of the Society, the Law Society of England and Wales, the University of Hong Kong, the City University of Hong Kong or the City Polytechnic of Hong Kong as to the results achieved by any candidate in an examination shall be sufficient evidence of whether or not the candidate has passed or failed."

6. The Secretariat has circulated to Members the issues of the Gazette which contain the subsidiary legislation covered by the Reports in the usual manner. Members may also view the relevant issues of the Gazette at <http://www.gld.gov.hk/egazette/>.

### **Concluding observations**

7. The Reports stated that no difficulties relating to the legal and drafting aspects of the subsidiary legislation covered by the respective reports have been identified.

Encls.

Prepared by  
Legal Service Division  
Legislative Council Secretariat  
7 October 2015

**Legal Service Division Report on  
Subsidiary Legislation gazetted on 3 July 2015***Subsidiary legislation tabled on 8 July 2015*

No.	L.N. No.	Item
1.	130	Travel Agents (Fee Concessions) Regulation 2015
2.	131	Dentists (Registration and Disciplinary Procedure) (Amendment) Regulation 2015
3.	132	Ancillary Dental Workers (Dental Hygienists) (Amendment) Regulation 2015
4.	133	Medical Registration (Fees) (Amendment) Regulation 2015
5.	134	Midwives Registration (Fees) (Amendment) Regulation 2015
6.	135	Nurses (Registration and Disciplinary Procedure) (Amendment) Regulation 2015
7.	136	Enrolled Nurses (Enrolment and Disciplinary Procedure) (Amendment) Regulation 2015
8.	137	Medical Laboratory Technologists (Registration and Disciplinary Procedure) (Amendment) Regulation 2015
9.	138	Occupational Therapists (Registration and Disciplinary Procedure) (Amendment) Regulation 2015
10.	139	Optometrists (Registration and Disciplinary Procedure) (Amendment) Regulation 2015
11.	140	Radiographers (Registration and Disciplinary Procedure) (Amendment) Regulation 2015
12.	141	Physiotherapists (Registration and Disciplinary Procedure) (Amendment) Regulation 2015
13.	142	Chiropractors Registration (Fees) (Amendment) Regulation 2015
14.	143	Chinese Medicine Practitioners (Fees) (Amendment) Regulation 2015
15.	144	Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2015
16.	145	Live Television Link (Witnesses outside Hong Kong) Rules
17.	146	Rules of the High Court (Amendment) (No. 2) Rules 2015
18.	147	Hong Kong Court of Final Appeal Suitors' Funds Rules
19.	148	High Court Suitors' Funds (Amendment) Rules 2015
20.	149	District Court Suitors' Funds (Amendment) Rules 2015

No.	L.N. No.	Item
21.	150	Lands Tribunal (Suitors' Funds) Rules
22.	151	Labour Tribunal (Suitors' Funds) (Amendment) Rules 2015
23.	152	Small Claims Tribunal (Suitors' Funds) (Amendment) Rules 2015
24.	153	Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2015
25.	154	Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013 (Commencement) Notice 2015

**Legal Service Division Reports on  
Subsidiary Legislation gazetted between 17 July and 25 September 2015***I. Subsidiary legislation to be tabled on 14 October 2015*

No.	L.N. No.	Item
1.	155	Competition (Fees) Regulation
2.	156	Competition Ordinance (Commencement) (No. 2) Notice 2015
3.	157	Competition Tribunal Rules (Commencement) Notice
4.	158	Competition Tribunal Fees Rules (Commencement) Notice
5.	159	Competition Tribunal Suitors' Funds Rules (Commencement) Notice
6.	160	Rules of the High Court (Amendment) Rules 2015 (Commencement) Notice
7.	161	Solicitors' Accounts (Amendment) Rules 2012 (Commencement) Notice
8.	162	Accountant's Report (Amendment) Rules 2012 (Commencement) Notice
9.	163	Solicitors (Professional Indemnity) (Amendment) Rules 2012 (Commencement) Notice
10.	164	Solicitors' Practice (Amendment) Rules 2012 (Commencement) Notice
11.	165	Foreign Lawyers Practice (Amendment) Rules 2012 (Commencement) Notice
12.	174	Trainee Solicitors (Amendment) Rules 2015
13.	175	Rules of the High Court (Amendment) (No. 3) Rules 2015
14.	176	Rules of the District Court (Amendment) Rules 2015
15.	177	Consular Relations (Additional Privileges and Immunities) (Cambodia) Order
16.	178	Administration of Estates by Consular Officers Ordinance (Amendment of Schedule: Cambodia) Order 2015
17.	179	Consular Conventions (Application of Section 3) (Amendment of Schedule: Cambodia) Order 2015
18.	180	Consular Relations (Additional Privileges and Immunities) (Philippines) Order
19.	181	Administration of Estates by Consular Officers Ordinance (Amendment of Schedule: Philippines) Order 2015
20.	182	Consular Conventions (Application of Section 3) (Amendment of Schedule: Philippines) Order 2015

*II. Subsidiary legislation not required to be tabled and not subject to amendment*

No.	L.N. No.	Item
1.	166	United Nations Sanctions (Yemen) Regulation 2015
2.	167	United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2015
3.	168	United Nations Sanctions (Côte d'Ivoire) Regulation 2015
4.	169	Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2015
5.	172	Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2015
6.	173	Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2015



**立法會**  
**Legislative Council**

LC Paper No. LS76/14-15

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 3 July 2015**

**Tabling in LegCo** : Council meeting of 8 July 2015

**Amendment to be made by** : Council meeting of 28 October 2015 (or that of 18 November 2015 if extended by resolution)

**PART I FEES AND TOLLS ADJUSTMENTS**

**Travel Agents (Fee Concessions) Regulation 2015 (L.N. 130)**

L.N. 130 is made by the Chief Executive in Council (CE in Council) under section 50(2) of the Travel Agents Ordinance (Cap. 218) and section 29 of the Interpretation and General Clauses Ordinance (Cap. 1). It provides for concessions on certain fees payable by a travel agent under the First Schedule to Travel Agents Regulations (Cap. 218A) within the period from 20 November 2015 to 19 November 2016 (the concession period). Details of the concessions are set out below:

- (a) the fee of \$630 for an application for a travel agent's licence is fully waived if the application is made within the concession period;
- (b) the fee for a licence or the renewal of a licence is waived if the term of the licence or renewed licence begins within the concession period, subject to a maximum amount of \$2,910 (i.e. \$485 (per month) x 6) in aggregate;
- (c) the fee of \$665 for amending a licence to permit the carrying on of the business of the travel agent at an additional address and the fee of \$925 for the issue of a duplicate of the amended licence is fully waived, if both the amendment date and the earliest date on which the business is permitted to be carried on at the address fall within the concession period; and

- (d) half of the fee of \$925 (i.e. \$462.5) for the issue of a duplicate of a renewed licence that permits the carrying on of the business of the travel agent at more than one address is waived if the duplicate is to be issued within the concession period, and the fee for the renewed licence referred to in paragraph (b) above within the concession period is waived.

2. According to LegCo Brief dated 29 June 2015 (File Ref: LM(1) to TAR CR 4/60/1 Pt.8) issued by the Commerce and Economic Development Bureau, the concessions are part of the short-term measures announced by the Financial Secretary in his 2015-2016 Budget to support the tourism sector which has been affected by the "Occupy Movement". The concessions will cost the Government about \$5.8 million.

3. As advised by the Clerk to the Panel on Economic Development, the Panel has not been consulted on L.N. 130.

4. L.N. 130 comes into operation on 20 November 2015.

**Dentists (Registration and Disciplinary Procedure)  
(Amendment) Regulation 2015 (L.N. 131)**

**Ancillary Dental Workers (Dental Hygienists)  
(Amendment) Regulation 2015 (L.N. 132)**

**Medical Registration (Fees) (Amendment) Regulation 2015 (L.N. 133)**

**Midwives Registration (Fees) (Amendment)  
Regulation 2015 (L.N. 134)**

**Nurses (Registration and Disciplinary Procedure)  
(Amendment) Regulation 2015 (L.N. 135)**

**Enrolled Nurses (Enrolment and Disciplinary Procedure)  
(Amendment) Regulation 2015 (L.N. 136)**

**Medical Laboratory Technologists (Registration and  
Disciplinary Procedure) (Amendment) Regulation 2015 (L.N. 137)**

**Occupational Therapists (Registration and Disciplinary  
Procedure) (Amendment) Regulation 2015 (L.N. 138)**

**Optometrists (Registration and Disciplinary Procedure)  
(Amendment) Regulation 2015** (L.N. 139)

**Radiographers (Registration and Disciplinary Procedure)  
(Amendment) Regulation 2015** (L.N. 140)

**Physiotherapists (Registration and Disciplinary Procedure)  
(Amendment) Regulation 2015** (L.N. 141)

**Chiropractors Registration (Fees) (Amendment)  
Regulation 2015** (L.N. 142)

**Chinese Medicine Practitioners (Fees) (Amendment)  
Regulation 2015** (L.N. 143)

5. Section 29A of Cap. 1 empowers the Financial Secretary<sup>1</sup> to vary fees which were previously fixed by subsidiary legislation made by CE in Council. Pursuant to section 29A of Cap. 1, the Secretary for Financial Services and the Treasury (SFST) has made L.N. 131 to L.N. 143 to revise 118 items of fees. These fees relate to, among others, the following matters:

- (a) registration in respect of dentists, medical practitioners, midwives, nurses, medical laboratory technologists, occupational therapists, optometrists, radiographers, physiotherapists, chiropractors and registered Chinese medicine practitioners;
- (b) enrollment as enrolled nurses and dental hygienists;
- (c) alteration to the registers of the relevant health professionals;
- (d) duplicate or certified copies of certificates;
- (e) issue of certificates verifying registration or enrollment;
- (f) issue of practising certificates or certificates of standing; and
- (g) entrance for examination relating to the above healthcare professionals.

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<sup>1</sup> Under section 3 of Cap. 1, "Financial Secretary" means Financial Secretary of the HKSAR and the Secretary for Financial Services and the Treasury.

Details of the fee revisions are set out in Annex N to the LegCo Brief dated 30 June 2015 (File Ref: FH CR 1/3/3921/89 Pt.16) issued by the Department of Health (DH) of the Food and Health Bureau.

6. According to the LegCo Brief, the fee revision is made with a view to recovering the full costs of providing services in line with the Government's "user pays" principle. Among the 118 fee items to be revised, 117 fees are to be increased by 7% to 20%, while the fee relating to restoration to the Register of Chinese Medicine Practitioners is to be reduced by 14%. According to paragraph 8 of the LegCo Brief, if the adjustments to the 118 fee items are implemented, the estimated net increase in revenue is about \$3.5 million per annum.

7. According to paragraph 10 of the LegCo Brief, the Administration has sought the views of the relevant healthcare professional bodies on the proposed fee adjustments. The relevant professional bodies have no objection to the proposal.

8. As advised by the Clerk to the Panel on Health Services, at its meeting on 20 April 2015 the Panel was consulted on the aforesaid proposal to revise the 118 fee items under the purview of DH. Members raised no objection to the proposal which should have relatively little impact on the general public or general business activities. However, Members made enquiries regarding the computation methodology in respect of the costs of those fee items and took the view that the Administration should reduce the costs as far as practicable.

9. L.N. 131 to L.N. 143 come into operation on 1 January 2016.

**Tate's Cairn Tunnel Ordinance (Amendment of Schedule)  
Notice 2015**

**(L.N. 153)**

10. L.N. 153 is made by the Commissioner for Transport (the Commissioner) under section 36(7) of the Tate's Cairn Tunnel Ordinance (Cap. 393). It seeks to replace the Schedule to Cap. 393 with a new one in order to reflect the increase of the tolls payable under Cap. 393.

11. Under section 36 of Cap. 393, the tolls which may be collected for the use by motor vehicles of the Tate's Cairn Tunnel are those specified in the Schedule to Cap. 393. The tolls may be varied by agreement between the CE in Council and Tate's Cairn Tunnel Company Limited (TCTCL). If an agreement cannot be reached, then either party may submit the question of variation of tolls to arbitration. After such an agreement or arbitral award is made, the

Commissioner shall, as soon as is practicable, by notice in the Gazette amend the Schedule.

12. According to paragraphs 6, 7 and 9 of the LegCo Brief (File Ref: THB(T)CR 1/4651/94) issued by the Transport and Housing Bureau in July 2015, the CE in Council and TCTCL have reached an agreement to increase the tolls. With effect from 1 January 2016, the toll adjustments are as follows:

- (a) no increase for public light buses and all types of goods vehicles;
- (b) \$1 increase for single-decker and double-decker buses;
- (c) no increase for private light buses;
- (d) \$2 increase for motorcycles;
- (e) \$3 increase for private cars, taxis and every additional axle.

13. TCTCL has also agreed to provide \$3 promotional discount for empty taxis between midnight and 6 a.m. for six months after the new tolls become effective, with the possibility of further extension subject to review. TCTCL also agreed that it would not submit any further toll increase application during the current franchise period, which is due to expire in July 2018. A comparison of the current and new tolls is set out below:

	Motor-cycles	Private cars & taxis	Private & light buses	Public light buses	Light goods vehicles	Medium & heavy goods vehicles	Single-decker buses	Double-decker buses	Additional axle
Existing tolls	\$13	\$17	\$24	\$23	\$24	\$28	\$31	\$34	\$21
New tolls	\$15	\$20	\$24	\$23	\$24	\$28	\$32	\$35	\$24
Increase % (Increase magnitude)	15% (\$2)	18% (\$3)	0% (-)	0% (-)	0% (-)	0% (-)	3% (\$1)	3% (\$1)	14% (\$3)

14. According to section 34(2) of Cap. 1, the LegCo's power to amend subsidiary legislation should be consistent with the power to make such subsidiary legislation. As section 36 of Cap. 393 provides that the tolls could only be varied either by agreement or arbitral award, and that the power of the Commissioner is merely to amend the Schedule to reflect such an agreement or arbitral award, it seems the Commissioner may not have the power to determine the toll levels or the timing for implementation of the new tolls. Consequently, there is little room for LegCo to repeal or amend L.N. 153 other than making minor technical amendments to the Schedule. Subcommittees which were formed to study notices made by the Commissioner under section 36(7) of Cap. 393 in 2005, 2008, 2010 and 2013 also noted such restrictions.

15. Members may refer to the LegCo Brief and its annexes for further details.

16. According to paragraph 24 of the LegCo Brief, the Transport Advisory Committee (TAC) was consulted on 21 April 2015. TAC is of the view that TCTCL's application for toll increase is not unreasonable and is justified.

17. As advised by the Clerk to the Panel on Transport, the Panel was briefed by the Administration on TCTCL's application for toll increase at its meeting on 17 April 2015. Members in general did not support the proposed toll increase. Various concerns were raised including concerns that TCTCL is already charging tolls higher than those of its alternative tunnels. There were also concerns that the proposed toll increase might cause motorists to switch to use the Lion Rock Tunnel, thereby aggravating the congestion there.

18. L.N. 153 comes into operation on 1 January 2016.

## **PART II GIVING OF EVIDENCE VIA A LIVE TELEVISION LINK**

**Live Television Link (Witnesses outside Hong Kong) Rules (L.N. 145)**

**Rules of the High Court (Amendment) (No. 2) Rules 2015 (L.N. 146)**

### Background on L.N. 145

19. Before the Evidence (Miscellaneous Amendments) Ordinance 2003 (Ord. No. 23 of 2003) was enacted, there were no provisions in the Criminal Procedure Ordinance (Cap. 221) allowing for the taking of evidence from witnesses outside Hong Kong by way of a live television (TV) link for the purposes of criminal proceedings in Hong Kong. Ord. No. 23 of 2003 provides, among other things, for a witness who is located outside Hong Kong and is willing to give evidence in criminal proceedings which take place in Hong Kong to give evidence via a live TV link if certain conditions are satisfied<sup>2</sup>.

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<sup>2</sup> Members may wish to refer to the LegCo Brief (File Ref: LP 911/00/1C/LP911/00/2C) issued by the Department of Justice in May 2002 on the Evidence (Miscellaneous Amendments) Bill 2002 for further information. According to paragraph 16 of the LegCo Brief, the arrangement was intended to reduce the inconvenience and travelling cost that a witness located overseas would have to bear if the witness is required to appear in a Hong Kong court to give live evidence. The Bill, enacted as the Evidence (Miscellaneous Amendments) Ordinance 2003, was passed by LegCo on 23 June 2003 and gazetted on 4 July 2003.

20. In particular, section 17 of Ord. No. 23 of 2003 adds a new Part IIIB (sections 79H to 79L) to Cap. 221 relating to taking evidence from witnesses outside Hong Kong by a live TV link. The new section 79L of Cap. 221 empowers the Chief Justice to make rules or give directions respecting the giving of evidence by way of a live TV link under Part IIIB. Subsequently, section 17 of Ord. No. 23 of 2003 was amended by the Statute Law (Miscellaneous Provisions) Ordinance 2005 (Ord. No. 10 of 2005) to empower the Chief Judge instead of the Chief Justice to make the rules according to section 79L of Cap. 221. Part IIIB of Cap. 221 has not been brought into operation pending the making of the relevant court rules.

### L.N. 145

21. L.N. 145 is made by the Chief Judge under section 79L of Cap. 221 to introduce rules concerning the giving of evidence to the court<sup>3</sup> by way of a live TV link from a country or territory outside Hong Kong under Part IIIB of Cap. 221. The key provisions of L.N. 145 include rules which set out certain definitions, provisions in respect of an application for a witness to give evidence by a live TV link from a place outside Hong Kong under section 79I<sup>4</sup> of Cap. 221, the determination of the application and rules in respect of the putting of documents to a witness who gives evidence via a live TV link. Members may refer to LegCo Brief on L.N. 145 and L.N. 146 (File Ref: LP 911/00/2C XX) issued by the Department of Justice in June 2015 for further details.

### Background on L.N. 146

22. Part VIII (which consists of sections 74 to 77D) of the Evidence Ordinance (Cap. 8) provides for the power of the Court of First Instance (CFI) to make an order for providing assistance to a court or tribunal (the requesting court) exercising jurisdiction in a country or territory outside Hong Kong for the purposes of civil and criminal proceedings instituted before the requesting court. Order 70 of the Rules of the High Court (Cap. 4A) provides for the relevant procedures for the application for such an order. Under section 76(2)(a) and (3) of Cap. 8, the court order may make provisions for the examination of witnesses, either orally or in writing and may require a person to give testimony, either orally or in writing. Section 13 of Ord. No. 23 of 2003 amends section 76(2)(a) and (3) of Cap. 8 to allow examination of witnesses by way of a live TV link. Section 13 of Ord. No. 23 of 2003 has not been brought into operation pending the making of the court rules relating to live TV link.

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<sup>3</sup> According to section 2 of L.N. 145, *court* includes the District Court and a magistrate.

<sup>4</sup> Section 79I(2) provides for the conditions that the court has to be satisfied in order to grant an application for giving evidence to the court by way of a live TV link from a place outside Hong Kong.

### L.N. 146

23. L.N. 146 is made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) to amend Order 70 to provide for the procedures in respect of the taking of evidence by way of a live TV link by a requesting court so that CFI will be able to give the relevant assistance when the relevant provisions of Ord. No. 23 of 2003 come into operation. In addition, L.N. 146 amends the references to "foreign court or tribunal" and other similar references to "requesting court" in Order 70 so as to achieve consistency with Part VIII of Cap. 8 in which the term "requesting court" is used. L.N. 146 also adds certain provisions in respect of the drawing up, certification and transmission of minutes upon the conclusion of a live TV link examination.

### Legal Service Division (LSD)'s enquiries with the Administration

24. In response to LSD's enquiries in respect of the time taken to prepare for the making of L.N. 145 and L.N. 146 of 2015 since the enactment of Ord. No. 23 of 2003, the Administration explained that a number of drafts of the rules had been prepared since 2003. Further, extensive discussions had been held by the Administration with the Law Society of Hong Kong on its concerns about the relevant rules. In addition, the Administration had also taken time to liaise with the Judiciary Administrator and other enforcement agencies on costs sharing arrangements in relation to the use of live TV link at court. The Administration admitted that owing to the technical nature of the rules and the time taken to consult relevant parties, the preparation of the rules has taken longer than expected and they hope to bring the relevant sections of Ord. No. 23 of 2003 and the rules into operation as soon as practicable.

### Public Consultation

25. According to paragraph 14 of the LegCo Brief, the Department of Justice has consulted the Hong Kong Bar Association and the Law Society of Hong Kong. The Hong Kong Bar Association had no objection to the rules under L.N. 145 and L.N. 146. The Law Society of Hong Kong raised certain concerns in respect of the rules, including the criteria for admissibility of evidence given via a live TV link and the right of appeal of an applicant whose application for giving evidence via a live TV link from a place outside Hong Kong has been refused by the court. The Department of Justice has responded to the objections. Members may refer to paragraph 14 of the LegCo Brief for further details.



### Consultation with LegCo Panel

26. As advised by the Clerk to the Panel on Administration of Justice and Legal Services (AJLS Panel), at its meeting on 24 November 2014, members were briefed on the draft L.N. 145 and L.N. 146. Members generally did not object to the Administration tabling the relevant draft rules at LegCo for negative vetting. Further, in view of the concern expressed by the Law Society of Hong Kong that the draft L.N. 145 would grant greater benefit to the prosecution side, the Administration was asked to consider making section 79I(2)(a) to (e) of Cap. 221 more stringent to safeguard the interests of all parties to criminal proceedings. Questions were also raised in respect of the legal consequences that a witness might face if the witness concerned gave false evidence in a place outside Hong Kong to a Hong Kong court via a live TV link and the means which the relevant Hong Kong authority would employ to ensure that the witness was aware of the relevant consequences.

### Commencement

27. L.N. 145 will come into operation on the day on which section 17 of Ord. No. 23 of 2003 comes into operation. L.N. 146 will come into operation on the day on which section 13 of Ord. No. 23 of 2003 comes into operation. According to paragraph 18 of the LegCo Brief, the Department of Justice aims to bring sections 13 and 17 of Ord. No. 23 of 2003 into operation as soon as practicable after negative vetting of L.N. 145 and L.N. 146.

## **PART III SUITORS' FUNDS RULES**

<b>Hong Kong Court of Final Appeal Suitors' Funds Rules</b>	<b>(L.N. 147)</b>
<b>High Court Suitors' Funds (Amendment) Rules 2015</b>	<b>(L.N. 148)</b>
<b>District Court Suitors' Funds (Amendment) Rules 2015</b>	<b>(L.N. 149)</b>
<b>Lands Tribunal (Suitors' Funds) Rules</b>	<b>(L.N. 150)</b>
<b>Labour Tribunal (Suitors' Funds) (Amendment) Rules 2015</b>	<b>(L.N. 151)</b>
<b>Small Claims Tribunal (Suitors' Funds) (Amendment) Rules 2015</b>	<b>(L.N. 152)</b>

Background on L.N. 147 to L.N. 152

28. At present, suitors' funds are administered in the Court of Final Appeal (CFA), the High Court, the District Court, the Lands Tribunal, the Labour Tribunal and the Small Claims Tribunal. With the exception of the suitors' funds for CFA and the Lands Tribunal (which are operated administratively), there are dedicated suitors' funds rules for the other courts or tribunals. Members may refer to the LegCo Brief (File Ref: SC 101/33/11) issued by the Judiciary Administration in June 2015 for further details.

L.N. 147 and L.N. 150

29. L.N. 147 is made by the Chief Justice under section 40A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). L.N. 150 is made by the Chief Justice after consulting the president of the Lands Tribunal under section 10AA of the Lands Tribunal Ordinance (Cap. 17). Section 40A of Cap. 484 and section 10AA of Cap. 17 were added by the Administration of Justice (Miscellaneous Provisions) Ordinance 2014 (Ord. No. 20 of 2014) and they have not been brought into operation. According to the Administration, the commencement of the relevant sections are pending the making of the relevant rules.

30. L.N. 147 and L.N. 150 introduce specific rules for suitors' funds lodged into CFA and the Lands Tribunal respectively. These rules include provisions in respect of the duties of the Registrar of CFA and the Lands Tribunal in relation to suitors' funds that are lodged with the respective Registrars, the details of paying the relevant funds and costs out of CFA and the Lands Tribunal respectively, the investment of the funds made by the respective Registrars and the crediting of interest to the relevant suitors' funds accounts. In particular, specific rules are added by L.N. 150 to Cap. 17 to deal with funds that are lodged in the form of securities. L.N. 147 and L.N. 150 also align the payment-out hours of the suitors' funds with the opening hours of the accounts offices and provide for transitional provisions to deal with the existing funds immediately before the commencement of L.N. 147 and L.N. 150.

L.N. 148 and L.N. 149

31. L.N. 148 and L.N. 149 are made by the Chief Judge under section 57 of Cap. 4 and section 73 of the District Court Ordinance (Cap. 336) respectively to make certain amendments to the High Court Suitors' Funds Rules (Cap. 4B) and the District Court Suitors' Funds Rules (Cap. 336E) respectively. The amendments include specifying the information which must be included in the receipts for money paid into the High Court and the District Court respectively, and specifying the documentary proof that are required for

listed and unlisted securities that are lodged in the respective courts. L.N. 148 and L.N. 149 also align the payment-out hours of the suitors' funds with the opening hours of the accounts offices of the relevant courts. Further, the period before interest begins to accrue for individual accounts is shortened from 14 days to three business days. However, interests for sanctioned payments<sup>5</sup> relating to costs<sup>6</sup> continue to start to accrue after the expiry date for acceptance of such payments by the other party.

32. In addition, transitional arrangements are provided under L.N. 148 and L.N. 149 in respect of suitors' funds which are paid into the relevant courts before the commencement dates of L.N. 148 and L.N. 149.

#### L.N. 151 and L.N. 152

33. L.N. 151, which is made by the Chief Justice under section 45 of the Labour Tribunal Ordinance (Cap. 25), amends the Labour Tribunal (Suitors' Funds) Rules (Cap. 25D). The amendments include enabling the Labour Tribunal to accept movable properties as suitors' funds which are lodged into the Tribunal and to require that a register to be kept for all non-monetary funds and the relevant dealings.

34. Amendments made by L.N. 152 (which is made by the Chief Justice under section 36 of the Small Claims Tribunal Ordinance (Cap. 338)) to amend the Small Claims Tribunal (Suitors' Funds) Rules (Cap. 338D) include providing that the statement of accounts concerned must be signed by the Registrar of the District Court instead of the Registrar of the High Court.

35. In addition, L.N. 151 and L.N. 152 align the payment-out hours of the suitors' funds with the opening hours of the accounts offices of the respective Tribunals.

#### LSD's enquiries with the Administration

36. Upon enquiries made by LSD, the Administration has provided justifications for the differences in the handling of suitors' funds in various courts and tribunals. Such differences include the acceptance of "movable property" or "securities" as a kind of suitors' funds only by some of the courts or tribunals concerned and the different mechanisms for payment into and out of the suitor's funds administered in various courts or tribunals. According to the

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<sup>5</sup> In gist, sanctioned payment is a kind of payment which is lodged in a court by a suitor to act as an incentive for the relevant litigating parties to settle disputes at an early stage.

<sup>6</sup> For sanctioned payments relating to costs under Order 62A of Cap. 4A and the Rules of the District Court (Cap. 336H), L.N. 148 and L.N. 149 provide respectively that interest starts to accrue on the 14<sup>th</sup> day after the day on which the money is paid into the court concerned.

Administration's reply, the differences reflect the different operational needs of the courts or tribunals concerned.

### Public Consultation

37. According to paragraph 21 of the LegCo Brief, the Judiciary has consulted various stakeholders, including the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Law Costs Draftsmen Association. They support the legislative amendments.

### Consultation with LegCo Panel

38. As advised by the Clerk to AJLS Panel, the Panel noted at its meeting held on 27 April 2015 an information paper entitled "Proposed Legislative Amendments relating to Suitors' Funds Rules" provided by the Judiciary Administration. The paper sets out the proposals of the Judiciary to (a) prepare new dedicated suitors' funds rules for CFA and the Lands Tribunal; and (b) amend the existing suitors' funds rules for the High Court, the District Court, the Labour Tribunal and the Small Claims Tribunal, as appropriate, to refine the operations. The Panel did not raise any queries on the paper.

### Commencement

39. L.N. 147 and L.N. 150 to L.N. 152 will come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette. L.N. 148 and L.N. 149 will come into operation on a day to be appointed by the Chief Judge by notice published in the Gazette.

## **PART IV COMMENCEMENT NOTICE**

### **Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013 (Commencement) Notice 2015**

**(L.N. 154)**

### Background

40. The Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013 (L.N. 188 of 2013) was made by the CE in Council after consultation with the Advisory Council on the Environment to amend the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) to specify the South East New Territories (SENT) Landfill as a designated waste disposal facility accepting only construction waste that

contains not more than 50% by weight of inert construction waste<sup>7</sup>. Further, a new provision was also added by L.N. 188 of 2013 to Cap. 354L to require that refuse collection vehicles (RCVs) driven into a specified landfill or refuse transfer station must be equipped with a metal tailgate cover and a waste water sump tank that comply with specific standards. Members may refer to the LegCo Brief (File Ref: (7) in EP CR 9/150/38) issued by the Environment Bureau (EB) and the Environmental Protection Department (EPD) jointly in November 2013 for further information. A subcommittee was formed to study L.N. 188 of 2013<sup>8</sup>.

41. By the Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013 (Commencement) Notice 2014<sup>9</sup> (L.N. 154 of 2014), L.N. 188 of 2013 (except sections 3 and 7) came into operation on 1 April 2015. The effect is that with effect from 1 April 2015, RCVs entering a specified landfill or refuse transfer station are to be equipped with certain devices and compliance checks can be conducted on such RCVs. A subcommittee was formed to study L.N. 154 of 2014<sup>10</sup>. As advised by the Clerk to the Subcommittee, at the Subcommittee's meeting on 9 January 2015, the Subcommittee noted that the commencement of sections 3 and 7 of L.N. 188 of 2013 would depend on the re-routing of the waste collection service (waste collection service) provided by the Food and Environmental Hygiene Department. Further, the Administration has advised that since the waste collection trade would need a few more months after mid-2015 to adjust to using the West Kowloon Transfer Station and Shatin Transfer Station, sections 3 and 7 of L.N. 188 of 2013 (relating to SENT Landfill) are anticipated to be brought into operation towards the end of 2015<sup>11</sup>.

#### L.N. 154 of 2015

42. L.N. 154 is made by the Secretary for the Environment under section 1 of L.N. 188 of 2013 to appoint 6 January 2016 as the day on which sections 3 and 7 of L.N. 188 of 2013 come into operation so that, with effect from 6 January 2016, the SENT Landfill is specified to receive only construction waste that contains not more than 50% by weight of inert construction waste. With the coming into operation of L.N. 154 of 2015, L.N. 188 of 2013 will come into full operation. Members may wish to refer to

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<sup>7</sup> Please refer to item 1 of Schedule 2 to Cap. 354L.

<sup>8</sup> Members may wish to refer to the relevant report of the Subcommittee (LC Paper No. CB(1)726/13-14) for further information.

<sup>9</sup> Members may wish to refer to the LegCo Brief (File Ref: EP 193/10/01/06) issued by EB and EPD in December 2014 for further information on L.N. 154 of 2014.

<sup>10</sup> Members may wish to refer to the relevant report of the Subcommittee (LC Paper No. CB(1) 456/14-15) for further information.

<sup>11</sup> Members may wish to refer to paragraph 15 of the Legal Service Division Report on Subsidiary Legislation Gazetted on 12 December 2014 (LC Paper No. LS21/14-15) for further information.

the LegCo Brief (File Ref: EP 193/10/01/06) issued by EB and EPD in June 2015 for further information.

### Public Consultation

43. According to paragraphs 17 and 18 of the LegCo Brief, a working group was set up by the Administration with the representatives from the waste collection trade, property management and government departments in March 2014 to reflect the traders' concerns. Further, briefing or discussion sessions in respect of the measures of the Waste Diversion Plan (WDP) associated with the SENT Landfill were held by the Administration with stakeholders such as waste collectors and property management companies.

### Consultation with LegCo Panel

44. As advised by the Clerk to the Panel on Environmental Affairs, the Administration consulted the Panel at its meeting on 22 June 2015 on the commencement date of sections 3 and 7 of L.N. 188 of 2013. Members of the Panel raised no objection to designate 6 January 2016 to be the commencement date. Members made enquiries on issues including progress of the waste collection service and renewal of related contracts for implementation of waste diversion from the SENT Landfill, reduction in the number of refuse collection vehicular trips to the Landfill since 2015, timing of closing down the Landfill as well as the potential impact on the WDP arising from applications made by citizens for judicial review regarding extension of the Landfill.

## **PART V MISCELLANEOUS**

### **Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2015 (L.N. 144)**

45. L.N. 144 is made by the Chief Executive under section 50(1) of the Dangerous Drugs Ordinance (Cap. 134) after consultation with the Executive Council. It amends Part I of the First Schedule to Cap. 134 in order to impose control on the following substances which are capable of being abused:

- (a) certain types of synthetic substances that are commonly known as NBOMe compounds;
- (b) certain other types of synthetic substances that are commonly known as synthetic cannabinoids.

46. Under Cap. 134, substances included in Part I of the First Schedule are dangerous drugs and are subject to the control of a licensing scheme administered by the Department of Health. Illicit trafficking and manufacturing of the substances will be subject to a maximum penalty of life imprisonment and a fine of \$5 million. Possession, consumption and supply of the substances would also constitute criminal offences.

47. According to the LegCo Brief (File Ref: NCR 2/1/8 S/F 12) issued by the Narcotics Division of the Security Bureau in June 2015, the Administration has consulted the relevant traders, as well as licensees under Cap. 134 and the Pharmacy and Poisons Ordinance (Cap. 138). The said traders and licensees have no objection to the proposal. The Administration has also consulted the Action Committee Against Narcotics on 27 March 2015. The said Committee supported the proposal.

48. As advised by the Clerk to the Panel on Security, the Panel was briefed by the Administration at its meeting on 10 April 2015 regarding the proposed amendments to the First Schedule to Cap. 134. Members supported the proposal and urged the Administration to keep monitoring local drug abuse trend and overseas development closely with a view to bringing newly emerging drugs under legislative control in a timely manner.

49. L.N. 144 comes into operation on 27 November 2015.

### **Concluding Observations**

50. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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Assistant Legal Adviser  
Legislative Council Secretariat  
13 August 2015

LS/S/35/14-15

**立法會**  
**Legislative Council**

LC Paper No. LS77/14-15

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 17 July 2015**

**Tabling in LegCo** : Council meeting of 14 October 2015

**Amendment to be made by** : Council meeting of 11 November 2015 (or  
2 December 2015 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION UNDER THE COMPETITION  
ORDINANCE (CAP. 619)**

<b>Competition Ordinance (Commencement) (No. 2) Notice 2015</b>	<b>(L.N. 156)</b>
<b>Competition Tribunal Rules (Commencement) Notice</b>	<b>(L.N. 157)</b>
<b>Competition Tribunal Fees Rules (Commencement) Notice</b>	<b>(L.N. 158)</b>
<b>Competition Tribunal Suitors' Funds Rules (Commencement) Notice</b>	<b>(L.N. 159)</b>
<b>Rules of the High Court (Amendment) Rules 2015 (Commencement) Notice</b>	<b>(L.N. 160)</b>
<b>Competition (Fees) Regulation</b>	<b>(L.N. 155)</b>

Background

The Competition Ordinance (Cap. 619), which was enacted in June 2012 and amended in 2014, provides for, among others, prohibitions against conduct that prevents, restricts or distorts competition in Hong Kong; prohibitions against mergers that substantially lessen competition in Hong Kong; and establishment of the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal).



2. By virtue of L.N. 177 of 2012, the provisions of Cap. 619 relating to (a) the establishment, functions and powers of the Commission; (b) merger; (c) determination of turnover of undertaking; (d) fees; (e) personal immunity of public officers; and (f) disclosure of information came into operation on 18 January 2013; while those relating to the establishment and constitution, jurisdiction and powers, and practice and procedure, of the Tribunal came into operation on 1 August 2013.

3. The uncommenced provisions of Cap. 619 include provisions on (a) the first and second conduct rules; (b) complaints and investigations; (c) enforcement powers of Commission; (d) review by the Tribunal; (e) enforcement before the Tribunal; (f) private actions; (g) concurrent jurisdiction relating to telecommunications and broadcasting; (h) indemnities and offences; (i) the Schedules to Cap. 619 relating to various matters including general exclusions from the conduct rules, mergers, orders that may be made by the Tribunal in relation to mergers and contraventions of competition rules, and matters that must be provided for in the Memorandum of Understanding. According to the Administration, these provisions have not been brought into operation pending the completion of the Commission's guidelines and the Tribunal rules and procedures.

4. As part of the Administration's plan to bring Cap. 619 into full operation, three batches of subsidiary legislation (consisting of 9 items) were gazetted on 23 November 2012 (L.N. 177 of 2012), 18 February 2015 (L.N. 36 of 2015 to L.N. 39 of 2015) and 5 June 2015 (L.N. 109 of 2015 to L.N. 112 of 2015) respectively on various legal, administrative and procedural matters. Except for the Competition Tribunal Rules (L.N. 109 of 2015), the Competition Tribunal Fees Rules (L.N. 110 of 2015), the Competition Tribunal Suitors' Funds Rules (L.N. 111 of 2015) and the Rules of the High Court (Amendment) Rules 2015 (L.N. 112 of 2015), the other items of subsidiary legislation have been brought into operation.

#### L.N. 156

5. By L.N. 156 made under section 1(2) of Cap. 619, the Secretary for Commerce and Economic Development has appointed 14 December 2015 as the day on which the uncommenced provisions of Cap. 619 come into operation. The legal effect of L.N. 156, when read together with L.N. 155 and L.N. 157 to L.N. 160, is that Cap. 619 will be brought into full operation as from 14 December 2015.

6. Members may refer to the Legislative Council (LegCo) Brief (File Ref: CITB CR 05/62/25/14) issued by the Commerce and Economic Development Bureau on 15 July 2015 for further information.

L.N. 157 to L.N. 160

7. L.N. 157 to L.N. 160 respectively appoint 14 December 2015 as the day on which L.N. 109 of 2015 to L.N. 112 of 2015 come into operation.

8. L.N. 109 prescribes the practice and procedure to be followed in the Tribunal in all matters with respect to which the Tribunal has jurisdiction and any matters incidental or relating to that practice or procedure. L.N. 110 prescribes the fees payable in connection with the applications to the Tribunal and proceedings in the Tribunal so that the fees for similar matters or items in the High Court and the Tribunal are standardized at the same levels. L.N. 111 provides for the administration of the suitors' funds kept by the Tribunal established under Cap. 619. L.N. 112 amends the Rules of the High Court (Cap. 4A) to provide for the practice and procedure in the Court of First Instance of the High Court for the transfer of proceedings under Cap. 619.

9. Before the tabling of L.N. 109 to L.N. 112 in LegCo, a subcommittee was formed to study them in their draft form (the draft Rules). All the amendments suggested by the subcommittee on the draft Rules have been incorporated in L.N. 109 to L.N. 112 when they were gazetted. Members may refer to the subcommittee's report dated 20 May 2015 (LC Paper No. CB(4)1016/14-15) for further information.

L.N. 155

10. Under section 164 of Cap. 619, the Chief Executive (CE) may make regulations prescribing the amount of fees for the making of an application to the Commission under Cap. 619 and the provision of any service. Under section 159 in Part 11 of Cap. 619, the Communications Authority (CA) may perform the functions of the Commission under Cap. 619 in so far as they relate to the conduct of undertakings that are licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562). Section 164(4)(d) of Cap. 619 provides that regulations for fees may provide for the reduction, waiver or refund, in whole or in part, of any fee, either upon the happening of certain event or in the discretion of the Commission.

11. L.N. 155 is made by CE under section 164 of Cap. 619 after consultation with the Executive Council to prescribe the amount of fees payable for making certain applications to the Commission or CA under Cap. 619. The prescribed fees which are set out in the Schedule to L.N. 155 are summarized below:-

<b>Types of application</b>	<b>Specified amount per application (HK\$)</b>
Application under section 9(1) or 24 for a decision as to whether an agreement or conduct is excluded or exempt from the application of the first or second conduct rule <sup>1</sup> (except an application for exclusion from the application of the first conduct rule on the ground of an agreement enhancing overall economic efficiency) <sup>2</sup>	50,000
Application under section 9(1)(a) for a decision as to whether an agreement is excluded from the application of the first conduct rule on the ground of an agreement enhancing overall economic efficiency	100,000
Application under section 15 for the issue of a block exemption order in respect of a particular category of agreement	500,000
Application for a decision as to whether a merger is, or a proposed merger would (if completed) be, excluded from the application of the merger rule <sup>3</sup> or Schedule 7 to Cap. 619	500,000

12. L.N. 155 provides for different charging mechanisms in relation to the applications made to the Commission and CA. For an application made to the Commission, a fee of the specified amount is payable on the making of the application subject to the discretion of the Commission to reduce, waive or

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<sup>1</sup> Under section 6 of Cap. 619, the first conduct rule prohibits agreements, concerted practices as well as decisions of an association of undertakings that have the object or effect to prevent, restrict or distort competition in Hong Kong. Under section 21 of Cap. 619, the second conduct rule prohibits an undertaking with a substantial degree of market power from abusing that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

<sup>2</sup> Under sections 9(1), 24(1) and Schedule 1 to Cap. 619, exclusions or exemptions from the application of the first and second conduct rules which are not provided on the ground of agreements enhancing overall economic efficiency include agreements or conducts which (a) are for compliance with legal requirements; (b) are for services of general economic interest; (c) result in a merger; (d) are of lesser significance; (e) fall under the exemption provided by a block exemption order; (f) fall under exemption provided by an order made by the CE in Council on the ground of public policy or avoidance of conflict with international obligations; or (g) fall under the disapplication provided for statutory bodies or specified persons or specified persons engaged in specified activities.

<sup>3</sup> Under section 3(1) of Schedule 7 to Cap. 619, an undertaking must not, directly or indirectly, carry out a merger that has, or is likely to have, the effect of substantially lessening competition in Hong Kong.

refund the fee in whole or in part (section 3 of L.N. 155). According to paragraph 6 of the LegCo Brief (File Ref: CITB CR 05/62/43/9) issued by the Commerce and Economic Development Bureau on 15 July 2015, the charging of fees up front by the Commission would deter frivolous applications and reduce the risk of difficulty in recovering fees after the applications have been processed. If the cost involved in processing an application is lower than the specified amount, the Commission is prepared to exercise its discretion to refund part of the collected fee to reflect the cost.

13. For an application made to CA, CA will charge a fee which is equal to the costs and expenses incurred by CA in making a decision on the application or in relation to the processing of the application but shall not exceed the specified amount in the Schedule to L.N. 155. L.N. 155 does not provide for a discretion for CA to reduce, waive or refund any fees (section 5 of L.N. 155). According to paragraphs 5 and 8 of the LegCo Brief, the Administration considers that such discretion is not to be given to CA due to the cost recovery principle adopted by the Office of the Communications Authority.

14. Further, L.N. 155 provides that if the Commission or CA declines to consider the application, the fee paid will be refunded or no fee will be charged (sections 3(2) and 5(4) of L.N. 155). In the case of transfer of application between the Commission and CA, the authority to which the application has been transferred would charge the fee for the application and the authority which initially received the application would not charge any fees and any fees paid will be refunded (sections 4 and 6 of L.N. 155).

15. According to paragraph 4 of the LegCo Brief, the Commission has taken into account fees payable to other regulatory authorities in Hong Kong, fees charged by competition authorities in other jurisdictions and the Government's "user pays" principle in setting the level of fees to be charged. The maximum level of fees would generally reflect the complexity of the cases and resources needed to handle them. The Commission consulted stakeholders including the major chambers of commerce and small and medium enterprises associations on the fee proposal in April 2015 (paragraph 15 of the LegCo Brief). Two of the submissions suggested that the Commission should consider handling applications free of charge and one suggested lower fees, but all supported that if fees are chargeable, the Commission should be given discretion to reduce, waive or refund the fees.

16. L.N. 155 comes into operation on the day appointed for the commencement of Part 11 of Cap. 619, i.e. 14 December 2015<sup>4</sup>.

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<sup>4</sup> By the Competition Ordinance (Commencement) (No. 2) Notice 2015 (L.N. 156 of 2015), the uncommenced provisions (including Part 11) of Cap. 619 will come into operation on 14 December 2015.

L.N. 155 to L.N. 160 – Consultation with LegCo Panels

17. As advised by the Clerk to the Panel on Economic Development (ED Panel), the Administration consulted the ED Panel on L.N. 155 and L.N.156 at the meeting held on 27 April 2015 on guidelines and a Memorandum of Understanding to be signed between the Commission and CA for the purpose of coordinating the performance of their functions under the concurrent jurisdiction prepared by the Commission as required under Cap. 619 and the fees as recommended by the Commission payable for making an application under Cap. 619. Members did not raise any objection to the fees charged under L.N. 155, and exchanged views with the Commission on different subjects covered in the draft guidelines in relation to the first conduct rule, second conduct rule and merger rule under Cap. 619. Members noted that the Administration intended to bring Cap. 619 into full operation in December 2015 to allow time for the business sector to adjust their operations to bring them in line with Cap. 619. The Clerk to the Panel on Administration of Justice and Legal Services (AJLS Panel) advised that the AJLS Panel has not been consulted on L.N. 157 to L.N. 160.

**PART II OTHER COMMENCEMENT NOTICES**

**Solicitors' Accounts (Amendment) Rules 2012**  
**(Commencement) Notice** (L.N. 161)

**Accountant's Report (Amendment) Rules 2012**  
**(Commencement) Notice** (L.N. 162)

**Solicitors (Professional Indemnity) (Amendment) Rules 2012**  
**(Commencement) Notice** (L.N. 163)

**Solicitors' Practice (Amendment) Rules 2012**  
**(Commencement) Notice** (L.N. 164)

**Foreign Lawyers Practice (Amendment) Rules 2012**  
**(Commencement) Notice** (L.N. 165)

18. By L.N. 161 to L.N. 165, the President of The Law Society of Hong Kong (the Law Society) has appointed 1 July 2016 as the day on which the following rules come into operation:-

- (a) the Solicitors' Accounts (Amendment) Rules 2012 (L.N. 151 of 2012);

- (b) the Accountant's Report (Amendment) Rules 2012 (L.N. 152 of 2012);
- (c) the Solicitors (Professional Indemnity) (Amendment) Rules 2012 (L.N. 153 of 2012);
- (d) the Solicitors' Practice (Amendment) Rules 2012 (L.N. 154 of 2012); and
- (e) the Foreign Lawyers Practice (Amendment) Rules 2012 (L.N. 155 of 2012).

19. L.N. 151 of 2012 to L.N. 155 of 2012 were made by the Council of the Law Society with the prior approval of the Chief Justice to codify the requirements for solicitors to account to clients for any interest earned on money deposited with them under the Solicitors' Accounts Rules (Cap. 159F), which previously were provided in a Practice Direction issued by the Law Society. The effect is to make it mandatory for solicitors to account for any interest earned if (a) the client's money deposited with them exceeds a specified amount; (b) the money has been retained in the account continuously for a specified period; and (c) the amount of the interest accrued exceeds \$500. The relevant requirements, as set out in L.N. 151 of 2012, include extending the application of the requirements to a solicitor corporation, a foreign lawyer and a foreign firm; providing certain exceptions to the solicitor's duty to pay client's money held or received by the solicitor into the client account; clarifying the extent of a solicitor's obligation to keep accounts; and empowering the Council of the Law Society to require a solicitor to produce the management accounts including monthly profit and loss accounts for inspection. L.N. 152 of 2012 to L.N. 155 of 2012 provide for amendments in incidental and related matters.

20. Upon our enquiry on the reasons for the time taken for bringing L.N. 151 of 2012 to L.N. 155 of 2012 into operation since their gazettal on 12 October 2012, the Law Society explained that time had been taken to do the necessary preparation work including (a) putting in place a waiver application system and preparing new waiver guidelines for the amended Cap. 159F; (b) revising the Manual on Solicitors' Accounting to align it with the amended Cap. 159F; (c) liaising with the Hong Kong Association of Banks and the Hong Kong Monetary Authority on the requirements of opening a "client account" under the amended Cap. 159F; and (d) organizing seminars to members to highlight the relevant amendments.

21. Members may refer to the LegCo Brief (with no file reference and undated) on L.N. 161 to L.N. 165 for background information.

22. As advised by the Clerk to the AJLS Panel, the AJLS Panel has not been consulted on L.N. 161 to L.N. 165.

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

**United Nations Sanctions (Yemen) Regulation 2015 (L.N. 166)**

**United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2015 (L.N. 167)**

**United Nations Sanctions (Côte d'Ivoire) Regulation 2015 (L.N. 168)**

23. L.N. 166 to L.N. 168 are made by 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.

L.N. 166

24. On 26 February 2014, the Security Council of the United Nations (UNSC) adopted Resolution 2140 (2014) imposing sanctions against Yemen in view of the serious human rights abuses and violence against civilians which constituted a threat to international peace and security in the region. The relevant sanctions have been implemented by the United Nations Sanctions (Yemen) Regulation (Cap. 537BJ). All provisions in Cap. 537BJ expired at midnight on 25 February 2015.

25. L.N. 166 is made to implement UNSC Resolution 2204 (2015), as adopted by UNSC on 24 February 2015, in respect of Yemen to renew the prohibition or sanction against:-

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by certain persons or entities; and
- (c) the entry into or transit through the Hong Kong Special Administrative Region (HKSAR) by certain persons.

26. These renewed sanctions against Yemen are essentially the same as those in the expired Cap. 537BJ.

27. L.N. 166 also gives effect to Resolution 2216 (2015) (as adopted by UNSC on 14 April 2015) imposing arms embargo against Yemen by:-

- (a) providing for the prohibition against the supply, sale, transfer or carriage of prohibited goods (i.e. arms or related materiel) to certain persons or entities;
- (b) providing for the prohibition against provision of assistance or training related to military activities or to the provision, maintenance or use of any prohibited goods to certain persons and entities;
- (c) providing for enforcement powers of the authorized officer including the power to investigate suspected ships, aircraft and vehicles and the power to require production of information and the power to enter and detain ships, aircrafts and vehicles. Non-compliance with the authorized officer's investigative power will be subject to criminal penalties<sup>5</sup>;
- (d) empowering an authorized officer to apply to a magistrate or judge for an order for forfeiture of any document, cargo or article seized; and
- (e) expanding the list of persons or entities designated by the Committee of the Security Council established under paragraph 19 of Resolution 2140 (2014) which are subject to the arms embargo measures.

28. L.N. 166 has come into operation when it was published in the Gazette on 17 July 2015. The provisions in L.N. 166 (except those relating to arms embargo measures) would expire at midnight on 26 February 2016.

29. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/9) issued by the Commerce and Economic Development Bureau in July 2015 for further information. A marked-up copy of the expired Cap. 537BJ showing the changes made by L.N. 166 is at Annex E to the LegCo Brief.

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<sup>5</sup> A charterer, operator or master of a ship, a charterer, operator or pilot in command of an aircraft or an operator or driver of a vehicle who without reasonable excuse, refuses or fails to comply with a request made by an authorized officer within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 (i.e. HK\$100,000) and to imprisonment for 6 months (see sections 12, 15 and 18 of L.N. 166 of 2015).



L.N. 167

30. Since 2011, UNSC has adopted various resolutions to impose sanctions against Libya having regard to serious violations of human rights and attacks against civilians in Libya. The United Nations Sanctions (Libya) Regulation 2011 (Cap. 537AW) was made and amended to implement these 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. The last amendment to Cap. 537AW was made by L.N. 143 of 2014 to give effect to Resolution 2146 (2014) and Resolution 2174 (2014) adopted by UNSC on 19 March 2014 and 27 August 2014 respectively to expand the scope of sanctions against Libya.

31. Determining that the situation in Libya continues to constitute a threat to international peace and security, UNSC adopted Resolution 2213 (2015) on 27 March 2015 to extend the sanctions or prohibitions imposed by Resolution 2146 (2014) in respect of the prevention of illicit oil exports. To implement Resolution 2213 (2015), L.N. 167 is made to amend Cap. 537AW to reflect the renewed prohibitions as follows:-

- (a) the prohibition against loading, transport or discharge of crude oil from Libya aboard certain ships;
- (b) the prohibition against engaging in certain financial transactions related to any crude oil from Libya aboard certain ships;
- (c) the prohibition against provision of certain services to certain ships under certain circumstances; and
- (d) the prohibition against certain ships from entering the waters of Hong Kong.

L.N. 167 also contains certain textual amendments.

32. Similar prohibitions which had been previously provided under L.N. 143 of 2014 expired at midnight on 18 March 2015. L.N. 167 has come into operation when it was published in the Gazette on 17 July 2015. The renewed prohibitions will expire at midnight on 31 March 2016.

33. Members may refer to the LegCo Brief (File Ref: CITB CR 95/53/1) issued by the Commerce and Economic Development Bureau in July 2015 for further information. The amendments made by L.N. 167 to Cap. 537AW are shown in Annex D to the LegCo Brief.

L.N. 168

34. Since 2004, UNSC has adopted a number of resolutions against Côte d'Ivoire imposing sanctions against Côte d'Ivoire or renewing certain of these sanctions upon their expiry in view of the persistent human rights violations against civilians which threaten the peace process in the region. These resolutions have been implemented by regulations made under Cap. 537. The last one, United Nations Sanctions (Côte d'Ivoire) Regulation 2014 (Cap. 537BK), already expired at midnight on 30 April 2015.

35. L.N. 168 is made to implement Resolution 2219 (2015), as adopted by UNSC on 28 April 2015, by providing for the prohibitions against:-

- (a) the supply, sale, transfer or carriage of arms or related lethal materiel to Côte d'Ivoire or certain persons connected with Côte d'Ivoire;
- (b) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (c) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (d) entry into or transit through the HKSAR by certain persons and relevant exceptions.

36. The provisions of L.N. 168 which renew the sanctions against Côte d'Ivoire are essentially the same as those in the expired Cap. 537BK.

37. L.N. 168 has come into operation when it was published in the Gazette on 17 July 2015 and will expire at midnight on 30 April 2016.

38. Members may refer to the LegCo Brief (File Ref: CITB CR 136/53/1) issued by the Commerce and Economic Development Bureau in July 2015 for further information. A marked-up copy of the expired Cap. 537BK showing the changes made by L.N. 168 is at Annex D to the LegCo Brief.

Other information and remarks

39. 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. 166 to L.N. 168 are not required to be tabled in the Legislative Council and are not subject to amendment by the Legislative Council. However, since 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), Members may consider referring them to the Subcommittee for its consideration.

40. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 166 to L.N. 168 were circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)1127/14-15 on 20 July 2015.

**Volunteer and Naval Volunteer Pensions Ordinance  
(Amendment of Schedules) Order 2015**

**(L.N. 169)**

41. L.N. 169 is made by the Secretary for Labour and Welfare under section 35(2) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202). It amends Schedules 3 to 8 to Cap. 202 to adjust the amounts and monthly rates for the payment of pensions, gratuities and other allowances payable under Cap. 202 in connection with the disablement or death of the officers and volunteers of the Hong Kong Volunteer Defence Corps and members of the Hong Kong Naval Volunteer Force who fought in defence of Hong Kong during the Second World War. Under section 35(2) of Cap. 202, the relevant amounts and monthly rates are adjusted in accordance with the percentage of increase declared in a notice made under section 4(1C) of the Pensions (Increase) Ordinance (Cap. 305).

42. By the Declaration of Increase in Pensions Notice 2015 (L.N. 113 of 2015) (the DIP Notice) gazetted on 5 June 2015 made under section 4(1C) of Cap. 305, an increase of 6.1% is declared in respect of a basic pension with effect from 1 April 2015 in accordance with the percentage of increase in the average monthly Consumer Price Index (A) (Average Index) of the 12 months ending on 31 March 2015 over the Average Index of the immediately preceding 12 months. Accordingly, pursuant to section 35(2) of Cap. 202, the amounts and monthly rates set out in Schedules 3 to 8 to Cap. 202 are adjusted in accordance with the percentage of increase (i.e. 6.1%) in respect of a basic pension declared in the DIP Notice. The relevant amounts and monthly rates were last revised in 2014 by L.N. 111 of 2014.

43. Section 35(4) of Cap. 202 provides that an order made under section 35(2) shall take effect on the same date as specified in the relevant notice made under Cap. 305. As the relevant DIP Notice came into effect on 1 April 2015, L.N. 169 is deemed to have come into operation on 1 April 2015.

44. Section 35(5) of Cap. 202 provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of an order made under section 35(2) of Cap. 202. L.N. 169 is therefore not required to be tabled in the LegCo and is not subject to amendment.

45. As advised by the Clerk to the Panel on Welfare Services (WS Panel), the WS Panel has not been consulted on L.N. 169.

46. According to paragraph 7 of the LegCo Brief issued by the Labour and Welfare Bureau on 13 July 2015 (File Ref: LWB CR 8/3231/92 Pt 18), the Administration considers that public consultation on L.N. 169 is not necessary as the adjustment of the amounts and monthly rates payable under Cap. 202 is a routine updating exercise.

### **Concluding Observations**

47. No difficulties have been identified in the legal and drafting aspects of L.N. 155 to L.N. 169.

Prepared by

CHENG Kiu-fung, Vanessa (L.N. 155 and L.N. 166 – L.N. 168)

Carrie WONG (L.N. 156 – L.N. 165 and L.N. 169)

Assistant Legal Advisers

Legislative Council Secretariat

26 August 2015

**立法會**  
**Legislative Council**

LC Paper No. LS78/14-15

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 24 July 2015**

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

**Tai Lam Tunnel and Yuen Long Approach Road  
Ordinance (Amendment of Schedule 1) Notice 2015** **(L.N. 172)**

L.N. 172 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. 172 came into operation on 1 August 2015.

2. 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 stipulated in Cap. 474, 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 the Interpretation and General Clauses Ordinance (Cap. 1) does not apply in respect of any such notice; accordingly, any such notice, including L.N. 172, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (section 45(3)).

3. 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 2015, 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 nine additional toll increases. The last statutory toll increase for Route 3 (CPS) came into effect on 1 August 2014.

4. The present increase as reflected in L.N. 172, which was applied by the Franchisee in August 2011, is the tenth 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 2010/11 statement of ANR which shows that the Franchisee's ANR for 2010/11 was \$703 million, which is lower than MENR of \$2,066 million for that year as specified in Schedule 4.

5. 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.

6. A comparison of the Route 3 (CPS) statutory tolls before and after the increase under L.N. 172, and the applicable concessionary tolls, is at **Annex I**.

7. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 172.

8. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 172.

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<sup>1</sup> The current concessionary tolls took effect from 22 February 2015.

**Western Harbour Crossing Ordinance (Amendment of  
Schedule 1) Notice 2015**

**(L.N. 173)**

9. L.N. 173 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. 173 came into operation on 31 July 2015.

10. Cap. 436 provides for a toll adjustment mechanism for WHC which is similar to that for Route 3 (CPS) as described in paragraph 2 above. The mechanism under Cap. 436 is summarized as follows -

- (a) Western Harbour Tunnel Company Limited (the Company) may, during the franchise period and subject to the relevant requirements stipulated in Cap. 436, 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. 173, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (section 52(3)).

11. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 1/4651/99) issued by THB in July 2015, 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 five anticipated toll increases<sup>2</sup> and has since applied for and been permitted eight additional toll increases. The last statutory toll increase for WHC came into effect on 31 July 2014.

12. The present increase as reflected in L.N. 173, which was applied by the Company in August 2012, is the ninth 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 2011/12 statement of net revenue which shows that the Company's actual net revenue for 2011/12 was \$1,081 million, which is lower than MENR of \$1,821 million for that year as specified in Schedule 5.

13. 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>3</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.

14. A comparison of the WHC statutory tolls before and after the increase under L.N. 173, and the applicable concessionary tolls, is at **Annex II**.

15. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 173.

16. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 173.

Prepared by

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26 August 2015

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<sup>2</sup> The Company has forfeited its right once to effect anticipated toll increase.

<sup>3</sup> The current concessionary tolls took effect from 22 February 2015.



Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2015	
1.	Motorcycles, motor tricycles	70	75	20
2.	Private cars, electrically powered passenger vehicles, taxis	75	80	40
3.	Public and private light buses	210	225	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	210	225	41
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	80	85	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	220	235	47
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	80	85	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	240	255	52
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	80	85	0
7.	Public and private single-decked buses	210	225	120
8.	Public and private double-decked buses	225	240	140

## Annex II

### Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2015	
1.	Motorcycles, motor tricycles	100	110	25
2.	Private cars, electrically powered passenger vehicles	180	195	60
	Taxis	180	195	55
3.	Public and private light buses	210	230	70
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	260	280	70
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	180	195	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	385	420	95
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	180	195	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	545	590	125
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	180	195	30
7.	Public and private single-decked buses	210	230	110
8.	Public and private double-decked buses	310	340	155

**立法會**  
**Legislative Council**

LC Paper No. LS79/14-15

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 4 September 2015**

**Tabling in LegCo** : Council meeting of 14 October 2015

**Amendment to be made by** : Council meeting of 11 November 2015 (or  
2 December 2015 if extended by resolution)

**Trainee Solicitors (Amendment) Rules 2015** (L.N. 174)

L.N. 174 is made by the Council of The Law Society of Hong Kong (The Law Society) under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice to amend rule 14 of the Trainee Solicitors Rules (Cap. 159J) in relation to evidence of results of examinations.

2. Rule 14 of Cap. 159J provides that a certificate or notification issued by or on behalf of certain professional societies or educational institutions as to the results achieved by any candidate in an examination shall be sufficient evidence of whether or not the candidate has passed or failed. Rule 7 provides that a person may only enter into a trainee solicitor contract if he has passed or received a certificate of completion or certificate of satisfactory completion as the case may be in, among others, the Postgraduate Certificate in Laws. L.N. 174 adds The Chinese University of Hong Kong to rule 14 of Cap. 159J as one of the recognised institutions.

3. It is noted that the LegCo Brief provided by The Law Society to the Legislative Council (LegCo) in respect of L.N. 174 lacks important details, which are usually contained in the LegCo Briefs issued by the Administration, such as the background to and justification for making of the subsidiary legislation in question, whether the relevant Panel of LegCo or any stakeholder has been consulted and the result of the consultation, the name of the person and contact details for enquiries on the LegCo Brief, the issuing party and the date

of issue of the LegCo Brief. In order to facilitate Members' consideration of L.N. 174, the Legal Service Division has requested The Law Society to provide a detailed LegCo Brief by reference to the contents and format of LegCo Briefs provided by the Administration. No detailed LegCo Brief is received from The Law Society on the date of this Report.

4. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 174.

5. L.N. 174 comes into operation on a day to be appointed by the President of The Law Society by notice published in the Gazette.

### **Concluding Observations**

6. The Legal Service Division is making enquires with The Law Society in relation to certain legal and drafting aspects of L.N. 174 and has not received a response from The Law Society on the date of this Report. The Legal Service Division will report further if necessary.

Prepared by

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16 September 2015

**立法會**  
**Legislative Council**

LC Paper No. LS80/14-15

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 18 September 2015**

**Tabling in LegCo** : Council meeting of 14 October 2015

**Amendment to be made by** : Council meeting of 11 November 2015 (or  
2 December 2015 if extended by resolution)

**Rules of the High Court (Amendment) (No. 3) Rules 2015** (L.N. 175)

**Rules of the District Court (Amendment) Rules 2015** (L.N. 176)

Background

The Legal Practitioners (Amendment) Ordinance 2012 (Ord. No. 22 of 2012) (LPAO) was enacted by the Legislative Council (LegCo) in July 2012 to introduce limited liability partnership (LLP) for solicitors' firms in Hong Kong by adding a new Part IIAAA to the Legal Practitioners Ordinance (Cap. 159). The effect of LPAO is that the innocent partners of solicitors' firms will be subject to limited liability arising from the default of other partners in the course of LPP's business. LPAO has not been brought into operation pending the making of the relevant subsidiary legislation<sup>1</sup> by the Council of The Law Society of Hong Kong (LS), the Rules Committee of the High Court and the District Court Rules Committee.

2. Under the new Part IIAAA of Cap. 159, a partner of a solicitors' firm which is a LLP is not, solely by reason of being a partner of such firm, jointly or severally liable for any partnership obligation (whether founded on tort, contract or otherwise) arising from a default of another partner, an

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<sup>1</sup> Except L.N. 175 and L.N. 176, the other three items of subsidiary legislation that have been made (by the Council of The Law Society of Hong Kong) for the implementation of LPAO are the Foreign Lawyers Practice (Amendment) Rules 2015 (L.N. 101), the Solicitors' Practice (Amendment) Rules 2015 (L.N. 102), and the Limited Liability Partnerships (Top-up Insurance) Rules (L.N. 103). The Subcommittee formed to study these three Rules has completed the scrutiny of the Rules and will report the deliberations to the House Committee on 9 October 2015. Members may make reference to the report of the Subcommittee (Ref.: LC Paper No. CB(4)1403/14-15) for further details on these Rules and the deliberations of the Subcommittee.

employee, agent or representative of the solicitors' firm in the provision of professional services. An innocent partner's interest in the partnership property<sup>2</sup> may still be subject to the enforcement of a judgment or order given or made in the related legal proceedings against the solicitors' firm. However, the innocent partner's personal assets will be protected and not be subject to the enforcement action in the relevant proceedings<sup>3</sup>.

3. At present, the procedures adopted in the High Court and the District Court in litigation involving partnerships (including enforcement action taken against a partnership) are respectively provided in Order 81 of the Rules of the High Court (Cap. 4A) and Order 81 of the Rules of the District Court (Cap. 336H). However, the provisions of Order 81 in both Rules primarily cater for general partnerships, but not for LPP.

#### L.N. 175 and L.N. 176

4. L.N. 175 and L.N. 176 are respectively made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) and the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336) to provide for the relevant procedures relating to the implementation of the LPP provisions in LPAO.

5. L.N. 175 and L.N. 176 amend rule 5 of Order 81 of Cap. 4A and Cap 336H respectively, mainly by adding a new paragraph (6) to the relevant rules. The effect is that any execution to enforce a judgment or order given or made against a solicitors' firm which is a LPP may not issue separately against a partner who is protected under Part IIAAA of Cap. 159 from liability for the partnership obligation unless (a) such partner admits in the pleading in the relevant proceedings that he is not protected under Part IIAAA of Cap. 159 or (b) such partner is adjudged by the court as not so protected.

#### Commencement

6. Both L.N. 175 and L.N. 176 will come into operation on the day on which LPAO comes into operation. According to paragraph 18 of the LegCo Brief (File Ref.: LP 5004/4/15C Pt. 42) issued by the Department of Justice in August 2015, the Administration aims to bring LPAO into operation as soon as practicable after completion of the negative vetting of L.N. 175 and L.N. 176 by the LegCo. In response to our enquiries, the Administration has confirmed that LPAO is ready for implementation after the making of L.N. 175 and L.N. 176 and it will consult LS on the commencement date of LPAO.

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<sup>2</sup> Under section 22(1) of the Partnership Ordinance (Cap. 38), all property and rights and interests in property originally brought into the partnership stock or acquired on account of the firm, or for the purposes and in the course of the partnership business, are partnership property.

<sup>3</sup> See new sections 7AC(1) and 7AH of Cap. 159.

Public consultation

7. According to paragraph 14 of the LegCo Brief, the Administration has consulted the Hong Kong Bar Association and LS in the course of preparation of the relevant amendments. The two professional bodies have no objections to the amendments.

Consultation with LegCo Panel

8. The Clerk to the Panel on Administration of Justice and Legal Services has advised that the Panel has not been consulted on L.N. 175 and L.N. 176.

Concluding observations

9. No difficulties have been identified in the legal and drafting aspects of L.N. 175 and L.N. 176.

Prepared by

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Legislative Council Secretariat  
5 October 2015

**立法會**  
**Legislative Council**

LC Paper No. LS82/14-15

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 25 September 2015**

**Tabling in LegCo** : Council meeting of 14 October 2015

**Amendment to be made by** : Council meeting of 11 November 2015 (or  
2 December 2015 if extended by resolution)

**CONSULAR MATTERS**

**Consular Relations (Additional Privileges and Immunities)  
(Cambodia) Order** (L.N. 177)

**Consular Relations (Additional Privileges and Immunities)  
(Philippines) Order** (L.N. 180)

Background

The Consular Relations Ordinance (Cap. 557) makes provisions for the implementation in Hong Kong of certain provisions of the Vienna Convention on Consular Relations and of other agreements concerning consular relations to which the Government of the People's Republic of China (PRC) is a party and which are applied to Hong Kong by the Central People's Government.

2. At present, the bilateral consular agreements are given legal effect in Hong Kong by the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, which is a national law applicable to Hong Kong by promulgation under Article 18 of the Basic law.

3. According to item 11 on the List of the Bilateral Agreements between the Central People's Government and Foreign States Relating to Privileges and Immunities Conferred on Consular Post (the List) in Annex G to the LegCo Brief (File Ref: SF (10) in PROT CR 6/1126/98) issued by the Administrative Wing of the Chief Secretary for Administration's Office on 23 September 2015, the Consular Convention Between PRC and the Kingdom of Cambodia (the Consular Convention), which was done on 25 February 2010, was applied to Hong Kong on 12 January 2011. According to item 12 on the List, the Consular Agreement Between PRC and the Republic of the Philippines (the Consular Agreement), which was done on 29 October 2009, was applied to Hong Kong on 13 July 2013.



L.N. 177 and L.N. 180

4. Under section 4(1) of Cap. 557, the Chief Executive in Council may by order in the Gazette, declare that the additional privileges and immunities accorded to a State under an international agreement, and specified in the order, shall have the force of law in Hong Kong.

5. L.N. 177 and L.N. 180 are made by the Chief Executive in Council under section 4(1) of Cap. 557 respectively to declare that the additional privileges and immunities accorded to a consular post of the Kingdom of Cambodia and of the Republic of the Philippines, or to persons connected with the consular post, or to both, as specified in the respective order, shall have the force of law in Hong Kong.

6. The additional privileges and immunities include, inter alia -

- (a) the acting head of a consular post shall enjoy the same rights, facilities, privileges and immunities as enjoyed by a head of a consular post;
- (b) inviolability of consular premises and the residences of consular officers;
- (c) inviolability of the consular archives and documents;
- (d) personal inviolability of consular officers and their family members;
- (e) immunity from any form of requisition of consular premises, their furnishings and the property and means of transport of the consular post;
- (f) immunity from the judicial and administrative jurisdiction except in certain civil proceedings for a consular officer, a member of the administrative and technical staff and of the service staff of the consular post, and their family members; and
- (g) in the event of the death of a member of a consular post or a member of his family, exemption of the movable property of the deceased from estate duties and all duties concerned.

**Administration of Estates by Consular Officers Ordinance  
(Amendment of Schedule: Cambodia) Order 2015 (L.N. 178)**

**Administration of Estates by Consular Officers Ordinance  
(Amendment of Schedule: Philippines) Order 2015 (L.N. 181)**

L.N. 178 and L.N. 181

7. Under section 3(1)(a) of the Administration of Estates by Consular Officers Ordinance (Cap. 191), the Chief Executive in Council may by order

published in the Gazette vary the Schedule to Cap. 191 by adding thereto any State with whom the PRC Government has entered into an agreement or arrangement which or any provision of which provides for the administration of estates by consular officers and which applies to Hong Kong.

8. L.N. 178 and L.N. 181 are made under section 3 of Cap. 191 to add to the Schedule to Cap. 191 two States, namely the Kingdom of Cambodia and the Republic of the Philippines, to -

- (a) give effect to the provisions in the Consular Convention and the Consular Agreement between PRC and the two States, done on 25 February 2010 and 29 October 2009 respectively, relating to the administration of estates of deceased Cambodian and Philippine nationals; and
- (b) enable section 2 of Cap. 191 to apply to consular officers of the Consulate General of these two States.

9. The effect of L.N. 178 and L.N. 181 is that consular officers of the two States will be empowered to administer the estates of their respective nationals who die within Hong Kong, or die outside Hong Kong, leaving property within Hong Kong, and no person is present in Hong Kong at the time of the national's death who is rightfully entitled to administer the estate of the deceased.

**Consular Conventions (Application of Section 3)  
(Amendment of Schedule: Cambodia) Order 2015 (L.N. 179)**

**Consular Conventions (Application of Section 3)  
(Amendment of Schedule: Philippines) Order 2015 (L.N. 182)**

L.N. 179 and L.N. 182

10. Section 3 of the Consular Conventions Ordinance (Cap. 267) confers on the consular officers powers to apply for grant of representation on behalf of their national not resident in Hong Kong to the estate of a deceased in Hong Kong and to receive payment of money or other property in Hong Kong forming part of the estate of a deceased. Under section 5 of Cap. 267, the Chief Executive may by order signified in the Gazette direct that section 3 shall apply to any foreign State. The States to which section 3 of Cap. 267 applies are set out in the Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267B).

11. L.N. 179 and L.N. 182 are made under section 5 of Cap. 267 to amend Cap. 267B to add to the Schedule two States, namely the Kingdom of Cambodia and the Republic of the Philippines.

12. The purpose of the amendments is to -
- (a) give effect to the relevant provisions in the Consular Convention and the Consular Agreement between PRC and the two States, done on 25 February 2010 and 29 October 2009 respectively, which confer powers on the consular officers of the States concerned to represent Cambodian and Philippine nationals respectively in inheritance proceedings and to transmit estates in Hong Kong to their respective nationals; and
  - (b) enable section 3 of Cap. 267 to apply to consular officers of the Consulate General of these two States.
13. Members may refer to the LegCo Brief for further information.

### Commencement

14. L.N. 177 to L.N. 182 come into operation on 11 December 2015.

### Consultation with LegCo Panel

15. As advised by the Clerk to the Panel on Administration of Justice and Legal Services (the Panel), the items of subsidiary legislation relating to privileges and immunities conferred on consular posts of the Kingdom of Cambodia and the Republic of the Philippines have not been discussed at the meeting of the Panel in the 2014-2015 session. An information paper "Subsidiary Legislation relating to Privileges and Immunities Conferred on Consular Posts" provided by the Administration Wing of the Chief Secretary for Administration's Office (LC Paper No. CB(4)1084/14-15(01)) was issued to Panel members for their reference on 1 June 2015.

### **Concluding Observations**

16. No difficulties have been identified in the legal and drafting aspects of the Orders in L.N. 177 to L.N. 182.

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