

立法會
Legislative Council

LC Paper No. LS50/16-17

**Paper for the House Committee Meeting
on 7 April 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 March 2017**

Tabling in LegCo : Council meeting of 29 March 2017

Amendment to be made by : Council meeting of 26 April 2017 (or that of 17 May 2017 if extended by resolution)

**International Organizations (Privileges and Immunities)
(European Bank for Reconstruction and Development)**

Order (L.N. 41)

L.N. 41 is made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) to declare that certain provisions of articles 44 to 53 and 55 of the Agreement ("Agreement") Establishing the European Bank for Reconstruction and Development ("EBRD") have the force of law in Hong Kong. These articles relate to the status of EBRD, and the privileges and immunities (including immunity from judicial proceedings if certain conditions are satisfied), immunities and privileges of officers and employees of EBRD, immunities of assets from seizure and exemption from taxation.

2. EBRD is a multilateral development bank which supports development in recipient member countries with a view to fostering their transition towards open market-oriented economies. China joined EBRD in January 2016 as a non-recipient member. Under article 54 of the Agreement, each EBRD member shall take the necessary actions for the purposes of implementing articles 44 to 55 of the Agreement.

3. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: B&M/2/1/10C) issued by the Financial Services and the Treasury Bureau ("FSTB") on 22 March 2017 for further information.

4. As advised by the Clerk to the Panel on Financial Affairs ("FA Panel"), the Administration provided an information paper (LC Paper No. CB(1)567/16-17(01)) to the Panel on 15 February 2017 on the Administration's plan to table L.N. 41 before the LegCo for negative vetting in the first quarter of 2017. The Panel noted the Administration's plan and did not discuss L.N. 41.

5. L.N. 41 comes into operation on 14 June 2017.

**Import and Export (Strategic Commodities) Regulations
(Amendment of Schedule 1) Order 2017**

(L.N. 42)

6. L.N. 42 is made by the Director-General of Trade and Industry ("DGTI") under section 6B of the Import and Export Ordinance (Cap. 60) to amend Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60G) to revise certain items of commodities under control. It also makes certain textual amendments concerning the description of some commodities for the sake of consistency and clarity.

7. Schedule 1 to Cap. 60G comprises two lists of articles, namely, the Munitions List on articles which can be used for military purposes and the Dual-use Goods List on articles which can be used for both industrial and military purposes ("strategic commodities"). Under regulation 2(1) of Cap. 60G, a person shall not import and export any article specified in Schedule 1 except under and in accordance with an import or export licence issued by DGTI.

8. According to paragraph 5 of the LegCo Brief issued by the Trade and Industry Department on 22 March 2017 (File Ref. : TRA CR 1506/2), L.N. 42 is made to reflect the latest changes in the control lists of strategic commodities adopted by various international non-proliferation regimes¹. Schedule 1 was last revised in 2015 (L.N. 27 of 2015). The changes made under L.N. 42 relax control over items in certain categories of dual-use strategic commodities, including electronics, computers, telecommunications and information security products; and impose new control on certain dual-use strategic commodities including the categories of sensors and lasers, navigation and avionics, and nuclear materials, facilities and equipment.

¹ These regimes include the Wassenaar Arrangement, the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Chemical Weapons Convention.

9. L.N. 42 will come into operation on a day to be appointed by the DGTI by notice published in the Gazette. According to paragraph 8 of the LegCo Brief, the Administration plans to publish in the Gazette a commencement notice on 26 May 2017 to bring L.N. 42 into effect on 3 July 2017.

10. According to paragraph 10 of the LegCo Brief, the Administration considers that public consultation is not necessary as the amendments are technical in nature.

11. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 42.

Occupational Retirement Schemes (Fees) (Amendment)

Rules 2017

(L.N. 43)

12. L.N. 43 is made by the Mandatory Provident Fund Schemes Authority ("MPFA") under section 73 of the Occupational Retirement Schemes Ordinance (Cap. 426) to increase eight items of fees (ranging from 45% to 100%) prescribed under the Schedule to the Occupational Retirement Schemes (Fees) Rules (Cap. 426D) with effect from 1 January 2018. These fees relate to schemes which are regulated or exempted under Cap. 426 ("ORSO Schemes"). They include the fee for the inspection of the register of ORSO Schemes ("the register") and the fee for a certified copy of an entry in the register; the application fee for and the periodic fee in respect of an exemption certificate of an ORSO Scheme; and the registration fee and the periodic fee in respect of an ORSO Scheme which is or is not a participating scheme of a pooling agreement.

13. The above fees payable for the inspection of (and for a certified copy of) an entry in the register were last revised in February 1995. The remaining fees have not been changed since October 1993. According to paragraph 4 of the LegCo Brief (File Ref: MPF/3/2/5C(2016)Pt.4) issued by FSTB on 22 March 2017, the existing fees cannot reflect the current cost borne by MPFA in processing the relevant applications and annual returns as well as in conducting the relevant supervisory work.

14. As advised by the Clerk to the FA Panel, the Panel was consulted on the proposal to revise the fees relating to ORSO Schemes at the meeting on 6 February 2017. Members had no objection to the proposal.

15. L.N. 43 comes into operation on 1 January 2018.

Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2017

(L.N. 44)

16. Under section 35 of the Securities and Futures Ordinance (Cap. 571), the Securities and Futures Commission ("SFC") may prescribe limits on, or the conditions relating to, the number of futures contracts and options contracts that may be held or controlled by any person. SFC may also prescribe the reportable positions in respect of such contracts. These limits and reportable positions are established and fixed for the stock futures contracts and the stock options contracts specified respectively in Schedules 1 and 2 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571Y).

17. L.N. 44 is made by SFC under section 35 of Cap. 571 to amend Cap. 571Y. These amendments include:

- (a) expanding the categories of persons who may be authorized to hold and control futures contracts or stock options contracts in excess of the prescribed limits set out in Schedule 1 or 2;
- (b) expanding the scope of excess authorizations that may be granted to include cases where the holding or control of futures contracts and options contracts is necessary for the purposes of index arbitrage activity and asset management activity;
- (c) making textual amendments to the descriptions of the futures contracts referred to in items 4, 5 and 9 of Schedule 1;²
- (d) adding the Mini-Hang Seng China Enterprises Index options contract, the US Dollar vs Renminbi (Hong Kong) options contract, the Renminbi (Hong Kong) vs US Dollar futures contract, and London Metal Mini futures contracts for nickel, lead and tin to the list of futures contracts in Schedule 1 and specifying the relevant prescribed limits and reporting levels in respect of the above contracts; and

² These contracts include the Hang Seng Index futures contract and options contract, the Hang Seng China Enterprises Index futures contracts and options contract and the FTSE/Xinhua China 25 Index futures contract and options contract.

- (e) increasing the prescribed limits for stock options contracts specified in Schedule 2.³

18. According to paragraph 27 of the LegCo Brief (with no reference number) issued by SFC on 22 March 2017, SFC conducted a public consultation exercise from 20 September 2016 to 21 November 2016 on the proposed enhancements to the position limit regime, the associated amendments to Cap. 571Y and the Guidance Note on the Position Limits and Large Open Position Reporting Requirements. The respondents were generally supportive of the enhancement proposal on the position limit regime.

19. As advised by the Clerk to the FA Panel, the Panel was briefed on the legislative proposals to enhance the position limit regime for the futures and options market at the meeting on 14 December 2016. Members did not raise objection to the proposals and enquired about the considerations in formulating the proposals and possible risks of the enhanced regime on the stability of the Hong Kong financial market. The Administration responded that the proposed enhancements would bring benefits to the Hong Kong market, including minimizing the associated risks to the market and any potential adverse impact of market stability.

20. L.N. 44 comes into operation on 1 June 2017.

**Securities and Futures (Amendment) Ordinance 2014
(Commencement) Notice 2017**

(L.N. 45)

21. L.N. 45 is made by the Secretary for Financial Services and the Treasury ("SFST") under section 1(2) of the Securities and Futures (Amendment) Ordinance 2014 (Ord. No. 6 of 2014) to appoint 3 July 2017 as the day on which Part 4 of Ord. No. 6 of 2014 comes into operation.⁴

22. Ord. No. 6 of 2014 amends Cap. 571 to provide, among other things, a statutory framework for the regulation of over-the-counter derivative products ("OTC products"). Part 4 of Ord. No. 6 of 2014 mainly concerns the mandatory electronic filing requirements of certain types of notifications and reports under Part XV of Cap. 571. Such notifications and reports include

³ These are stock options contracts on shares listed on a stock market operated by the Stock Exchange Company, and stock options contracts on shares or units of exchange traded funds.

⁴ The provisions relating to mandatory reporting, mandatory clearing and related record keeping obligations provided under Ord. No. 6 of 2014 came into operation on 10 July 2015 and 1 September 2016 by virtue of L.N. 95 of 2015 and L.N. 27 of 2016.

notifications in case where a person comes under a duty of disclosure when the person acquires an interest in voting shares in a listed corporation under section 324 of Cap. 571, and a report of the information received in pursuance of an investigation under section 331 of Cap. 571.

23. According to paragraph 2 of the letter issued by SFST to the Clerk to House Committee dated 22 March 2017, Part 4 of Ord. No. 6 of 2014 aims to improve the timeliness of publication of the required notifications and reports on the website of the Hong Kong Exchanges and Clearing Limited.

24. The uncommenced parts of Ord. No. 6 of 2014 mainly concern OTC products, including the regulation of intermediaries, mandatory trading obligations and the regulation of systematically important participants. According to the Administration, these parts will be brought into operation by phases.

25. As advised by the Clerk to the FA Panel, the Panel has not been consulted on L.N. 45. The Bills Committee on Securities and Futures (Amendment) Bill 2013 (enacted as Ord. No. 6 of 2014) supported the amendments to Cap. 571 to mandate electronic filing of notifications and reports on disclosure of interests in listed corporations to the Stock Exchange of Hong Kong in order to enhance the timeliness of publication of potentially market sensitive information.

Concluding Observations

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

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6 April 2017