

立法會
Legislative Council

LC Paper No. LS67/16-17

**Paper for the House Committee Meeting
on 19 May 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 May 2017**

Tabling in LegCo : Council meeting of 17 May 2017

Amendment to be made by : Council meeting of 14 June 2017 (or that of 5 July 2017 if extended by resolution)

Financial Institutions (Resolution) (Protected Arrangements) Regulation (L.N. 76)

Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017 (L.N. 77)

L.N. 77

By L.N. 77, the Secretary for Financial Services and Treasury ("SFST") appoints 7 July 2017 as the date on which the Financial Institutions (Resolution) Ordinance (Cap. 628) (except for Part 8, section 192 and Division 10 of Part 15) comes into operation.

2. Cap. 628, which was enacted by the Fifth LegCo in June 2016, establishes a regime for the orderly resolution of financial institutions ("FIs") in Hong Kong that are within the scope of Cap. 628 (a "within scope FI")¹ by resolution authorities ("RAs"), i.e. the Monetary Authority, the Insurance Authority ("IA") and the Securities and Futures Commission ("SFC") under circumstances prescribed under Cap. 628, and confers various powers on RAs for the purposes of the regime. A Bills Committee had been formed by the Fifth LegCo to study the Financial Institutions (Resolution) Bill. Members may refer to the Bills Committee's report on the Bill (LC Paper No. CB(1)1012/15-16) for details.

3. As to the uncommenced provisions of Cap. 628, Part 8 (sections 144 to 148) relates to the clawback of remuneration including the application to the Court of

¹ Under section 2(1) of Cap. 628, a "within scope FI" means a banking sector entity, an insurance sector entity or a securities and futures sector entity.

First Instance for a clawback order under section 145. Section 192 relates to the presentation of a winding up petition of a within scope FI or a holding company of a within scope FI to the Court of First Instance. Division 10 of Part 15 (sections 228 to 232) relates to consequential amendments to the Insurance Companies (Amendment) Ordinance 2015 (Ord. No. 12 of 2015).

4. According to paragraph 18 of the LegCo Brief (No file reference provided) dated 10 May 2017 issued by the Financial Services and the Treasury Bureau ("FSTB"), Hong Kong Monetary Authority ("HKMA"), SFC and Office of the Commissioner of Insurance on L.N. 76 and L.N. 77, having consulted the Judiciary Administration, the Administration decided that Part 8 and section 192 should come into operation after the Chief Justice had made the relevant court rules. As regards the consequential amendments made to Ord. No. 12 of 2015 in Division 10 of Part 15, as the relevant provisions of Ord. No. 12 of 2015 will come into operation on 26 June 2017 (see LC Paper No. LS58/16-17) before Cap. 628 will come into operation on 7 July 2017, those amendments become obsolete. It is, therefore, not necessary to bring Division 10 of Part 15 into operation.

L.N. 76

5. L.N. 76 is made by SFST under section 75(1) of Cap. 628. L.N. 76 provides for certain requirements to be complied by an RA in making a securities transfer instrument, a property transfer instrument or a bail-in instrument under Part 5 of Cap. 628 that results in a partial property transfer being effected or contains a bail-in provision² ("regulated Part 5 instrument") to safeguard the economic effect of six types of financial arrangements ("protected arrangements") under Cap. 628, namely a clearing and settlement systems arrangement, a netting arrangement, a secured arrangement, a set-off arrangement, a structured finance arrangement and a title transfer arrangement. These requirements are summarized below:

- (a) in relation to transfer of rights and liabilities of an entity under a set-off arrangement, netting arrangement or title transfer arrangement effected by a regulated Part 5 instrument, an RA is to seek to transfer all, and not just some, of those rights and liabilities;
- (b) when transferring assets or rights of an entity against which a liability is secured under a secured arrangement, an RA is to seek to ensure that the liability and the benefit of the security are also transferred;
- (c) in relation to transfer of assets, rights and liabilities under a protected structured finance arrangement or a protected clearing and settlement systems arrangement, an RA is to seek to transfer all, and not just some, of those assets, rights and liabilities; and

² Under section 58(3) of Cap. 628, a bail-in provision includes a provision for, e.g. cancelling or changing the form of liabilities owed by a within scope FI.

- (d) when an instrument made under Part 5 of Cap. 628 contains a bail-in provision, Part 3 of L.N. 76 requires an RA to seek not to make a bail-in provision in respect of a protected liability as defined in section 13 of L.N. 76.

6. Sections 10 to 12 of L.N. 76 provide for the consequences where a transfer is effected by a regulated Part 5 instrument inconsistently with what an RA was required to seek to do or not to do under Part 2 of L.N. 76. Further, section 15 under Part 3 of L.N. 76 provides that a person who considers that a liability owed to the person has been affected by the making of a bail-in provision in a regulated Part 5 instrument in respect of a protected liability may notify the RA, and the RA may take specified steps, if appropriate, to address the consequence caused by the bail-in provision.

7. L.N. 76 comes into operation on the day on which Part 5 of Cap. 628 comes into operation, i.e. 7 July 2017 (see L.N. 77).

8. According to paragraph 22 of the LegCo Brief on L.N. 76 and L.N. 77, FSTB, HKMA, IA and SFC jointly conducted a two-month public consultation from 22 November 2016 to 21 January 2017 on L.N. 76. Respondents generally agreed with the approach to L.N. 76 proposed in the consultation paper. The consultation conclusion was issued on 6 April 2017.

9. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed on L.N. 76 and L.N. 77 at the meeting on 18 April 2017. Members did not raise objection to the proposals and enquired about the transfer of assets, rights and liabilities under the protected arrangements and the implementation of cross-border resolution actions.

Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2017

(L.N. 78)

10. L.N. 78 is made by the Employees Retraining Board under section 31(2) of the Employees Retraining Ordinance (Cap. 423) to remove two training bodies, namely, Knowledge Education Centre and Hong Kong Storehouses, Transportation & Logistics Staff Association from Schedule 2 to Cap. 423. The effect of L.N. 78 is that the above training bodies can no longer provide or conduct retraining courses for the purposes of Cap. 423.

11. L.N. 78 came into operation on the day of its publication in the Gazette on 12 May 2017.

12. Members may refer to the LegCo Brief (File Ref: QA/TBM/09 Part 5) issued by the Employees Retraining Board Executive Office dated 10 May 2017 for details.

13. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 78.

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

**United Nations Sanctions (Central African Republic)
Regulation 2017**

(L.N. 79)

**United Nations Sanctions (Yemen) Regulation 2015
(Amendment) Regulation 2017**

(L.N. 80)

14. L.N. 79 and L.N. 80 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. They came into operation when they were published in the Gazette on 12 May 2017.

L.N. 79

15. Since 2013, the Security Council of the United Nations ("UNSC") has adopted several resolutions to impose or renew certain sanctions against the Central African Republic. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Central African Republic) Regulation 2016 (Cap. 537BS) which expired at midnight on 31 January 2017.

16. L.N. 79 is made to give effect to certain decisions in Resolution 2339 (2017), as adopted by UNSC on 27 January 2017, in respect of the Central African Republic by providing for the prohibition against:

- (a) the supply, sale, transfer or carriage of arms or related materiel to the Central African Republic;
- (b) the provision of assistance or training related to military activities in certain circumstances;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (e) entry into or transit through the Hong Kong Special Administrative Region ("HKSAR") by certain persons.

17. L.N. 79 expires at midnight on 31 January 2018.

18. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/8) issued by the Commerce and Economic Development Bureau ("CEDB") in May 2017 for further information. A marked-up version showing the differences between L.N. 79 and the expired Cap. 537BS is at Annex D to the LegCo Brief. The provisions in L.N. 79 are essentially the same as those in Cap. 537BS.

L.N. 80

19. Since 2014, UNSC has adopted several resolutions to impose certain sanctions against Yemen. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Yemen) Regulation 2015 (Cap. 537BP). Cap. 537BP was last amended by the United Nations Sanctions (Yemen) Regulation 2015 (Amendment) Regulation 2016 (L.N. 91 of 2016). Sections 5A, 7A, 7B, 9A, 9B and 30A of Cap. 537BP, as added by L.N. 91 of 2016, expired at midnight on 26 February 2017.

20. L.N. 80 amends Cap. 537BP³ to give effect to certain decisions in UNSC Resolution 2342 (2017) as adopted by UNSC on 23 February 2017 in respect of Yemen by providing for the prohibition against:

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources (new section 5B);
- (b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities (new section 9C); and
- (c) entry into or transit through HKSAR by certain persons (new sections 7C and 7D).

21. The four new sections mentioned in paragraph 20(a) to (c) above expire at midnight on 26 February 2018.

22. L.N. 80 also adds sections 9D and 30B to Cap. 537BP. Section 9D relates to provision of false information or documents for the purpose of obtaining licences and section 30B relates to specification of relevant person or relevant entity by Chief Executive. No duration is specified for sections 9D and 30B.

³ The new sections 5B, 7C, 7D, 9C, 9D and 30B of Cap. 537BP, as added by L.N. 80, are essentially the same as the expired provisions of Cap. 537BP.

23. In response to the Legal Service Division's enquiry on the reason for not specifying a duration for sections 9D and 30B, the Administration has indicated that these two provisions are standard provisions necessary for the effective implementation of financial sanctions against Yemen. Given that the time-limited nature of the financial sanctions against Yemen imposed by L.N. 80 would not be affected by the continued application of sections 9D and 30B after 26 February 2018, the Administration considers that there is no need to specify a duration for these two provisions.

24. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/9) issued by CEDB in May 2016 for further information. A marked-up version showing the differences between L.N. 80 and Cap. 537BP is at Annex E to the LegCo Brief.

Other information and remarks

25. 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 Cap. 537. Accordingly, L.N. 79 and L.N. 80 are not required to be tabled in LegCo and are not subject to amendment by LegCo. 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 L.N. 79 and L.N. 80 to the Subcommittee for its consideration.

26. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 79 and L.N. 80 were circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)943/16-17 on 15 May 2017.

Concluding Observations

27. No difficulties have been identified in the legal and drafting aspects of L.N. 77 to L.N. 80.

28. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 76, and a further report will be made if necessary.

Prepared by

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