

立法會
Legislative Council

LC Paper No. LS78/16-17

**Paper for the House Committee Meeting
on 16 June 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 June 2017**

Tabling in LegCo : Council meeting of 14 June 2017

Amendment to be made by : Council meeting of 12 July 2017 (or the first meeting of the next session if extended by resolution)

**Hong Kong Air Navigation (Fees) (Amendment)
Regulation 2017**

(L.N. 114)

L.N. 114 is made by the Chief Executive ("CE") under Article 97 of the Air Navigation (Hong Kong) Order 1995 (Cap. 448C) after consultation with the Executive Council to revise the fees and charges prescribed in the Schedule to the Hong Kong Air Navigation (Fees) Regulations (Cap. 448D) levied by the Civil Aviation Department ("CAD") with a view to achieving full cost recovery. The fees were last revised in January 2012. Out of the 76 fee items prescribed under Cap. 448D, 54 are revised by L.N. 114. The revised fees are summarized below:

- (a) 45 fee items which are charged according to fixed rates and currently under-recovering are increased by 3% to 46%. These items relate to fees payable for matters including the issue of a certificate of registration of an aircraft, the issue and renewal of a certificate of airworthiness in respect of aircraft, the grant of licences for aircraft maintenance engineers and flight crew, and applications for various permissions such as permission to drop persons or articles from aircraft and permission to carry dangerous goods;
- (b) two currently over-recovering items relating to fees for taking examinations for the grant of a pilot's licence or a licence to act as a flight engineer are reduced by 29% to 30%;
- (c) the fee structure for Air Operator's Certificate ("AOC") is revised by reducing the existing weight brackets for aircrafts, which are used to

determine the maximum fees for the grant or variation of an AOC, from five weight brackets to three weight brackets;

- (d) the maximum amounts of two fee items relating to licensing of aerodromes and grant of approval in respect of aircraft and equipment are increased by 40% to 50%; and
- (e) the minimum levels for four items of fees for certain applications payable for the investigations required by CE are removed.

2. Members may refer to Annex B to the Legislative Council ("LegCo") Brief (File Ref: THB(T)CR 37/951/08) issued by the Transport and Housing Bureau ("THB") on 7 June 2017 for a comparison table of the existing fees and the new fees.

3. According to paragraphs 21 and 22 of the LegCo Brief, the Administration has consulted the Aviation Development and Three-runway System Advisory Committee ("Advisory Committee"), the Airport Authority Hong Kong, the aviation industry and a number of aviation-related organizations in respect of the fee adjustment proposal. Some stakeholders have expressed concerns about the increases for certain fee items. The Administration explained that the proposed fee revision is necessary in order to reflect the cost increases over the years and the increase of certain fee rates or maximum fee levels would be staggered over three years.

4. As advised by the Clerk to the Panel on Economic Development ("ED Panel"), the ED Panel was consulted at the meeting on 27 February 2017 on the fee adjustment proposal and members were generally supportive of the proposal.

5. L.N. 114 comes into operation on 1 November 2017.

**Hong Kong Civil Aviation (Investigation of Accidents)
(Amendment) Regulation 2017**

(L.N. 115)

**Air Navigation (Hong Kong) Order 1995 (Amendment)
Order 2017**

(L.N. 116)

L.N. 115

6. In Hong Kong, civil aviation accident investigation is conducted in accordance with the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448B) with reference to the requirements of the International Civil Aviation Organization ("ICAO"). At present, the Director-General of Civil Aviation ("DGCA"), who is appointed by CE as the Chief Inspector ("CI"), is responsible for investigating civil aviation accident in accordance with Cap. 448B and Annex 13 to

the Convention on International Civil Aviation ("Annex 13") which contains ICAO's Standards and Recommended Practices on civil aviation accident investigation.

7. In February 2016, ICAO, to which China is a Contracting State, amended Annex 13 to, among others, require Contracting States to establish an independent air accident investigation authority. The new requirement has become applicable since November 2016 and ICAO recommended Contracting States to implement this new requirement by the end of October 2018.

8. L.N. 115, made by CE in Council under section 13 of the Civil Aviation Ordinance (Cap. 448), amends Cap. 448B to implement the latest requirements of ICAO on aircraft accident and incident investigation. The main amendments include:

- (a) transferring the functions and powers of DGCA to an independent aviation accident investigation authority comprising CI (who is directly accountable to the Secretary for Transport and Housing ("STH")) and Inspectors; and
- (b) with reference to Annex 13, amending definitions relevant to civil aviation accident investigation (including "accident" and "incident") and adding a new definition of "serious incident".

9. L.N. 115 also provides for transitional arrangements to cater for the situation where an investigation was commenced by DGCA but not completed before the commencement of L.N. 115.

L.N. 116

10. L.N. 116, made by CE in Council under section 2A of Cap. 448, amends Cap. 448C to revise certain cross-references relating to Cap. 448B as a result of the amendments made by L.N. 115 to Cap. 448B.

11. Members may note that Cap. 448C does not have an authenticated Chinese version. Whilst there is no requirement for subsidiary legislation to be enacted and published in both official languages under section 4 of the Official Languages Ordinance (Cap. 5), the Legal Service Division ("LSD") has enquired and the Administration has indicated that preparatory work has started for introducing the Chinese text for Cap. 448C in due course.¹

¹ LSD has previously made an enquiry concerning the absence of an authenticated Chinese version of Cap. 448C by a letter dated 28 October 2011. By a letter dated 2 November 2011 (Annex to LC Paper No. LS2/11-12), the Administration replied that they had begun undertaking preparatory work for introducing the Chinese text for Cap. 448C. The report of the Subcommittee on Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2013 and Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2013 dated 30 December 2013 also referred to the issue of Chinese text for Cap. 448C (paragraph 14 of LC Paper No. CB(1)599/13-14). In preparing this report, LSD has made a further enquiry on 9 June 2017 and the Administration replied that preparatory work is still being undertaken.

Consultation

12. According to paragraph 22 of the LegCo Brief (File Ref: THB(T)CR 1/17/951/08) issued by THB dated 7 June 2017, CAD has consulted stakeholders, including airlines, general aviation/business aviation operators, and the Advisory Committee on the proposal to set up an independent authority and related legislative amendments in March/April 2017. The stakeholders and the Advisory Committee generally supported the proposal and the related amendments.

13. As advised by the Clerk to the ED Panel, the ED Panel was consulted on the legislative proposal at the meeting on 27 March 2017. Members generally supported the proposed establishment of an independent authority to ensure impartiality of investigations. Some members however were concerned about the staffing establishment of the authority.

Commencement

14. L.N. 115 and L.N. 116 come into operation on a day to be appointed by STH by notice published in the Gazette.

Insurance (Levy) Regulation (L.N. 117)

Insurance (Levy) Order (L.N. 118)

15. The Insurance Companies (Amendment) Ordinance 2015 (Ord. No. 12 of 2015) provides for the establishment of the Insurance Authority ("IA") as a body corporate to regulate insurance companies and intermediaries and confers on IA the power to collect levies on premiums from policy holders to recover its operating cost. Under section 134(1) of Insurance Ordinance (Cap. 41)², as added by Ord. No. 12 of 2015, a prescribed levy is payable to IA for a contract of insurance by its policy holder if the contract relates to a prescribed class of insurance business or a prescribed type of contract of insurance.

16. L.N. 117 and L.N. 118 are made by CE in Council under section 134 of Cap. 41. L.N. 117 prescribes the way in which the prescribed levy must be paid. It also prescribes the remittance system under which authorized insurers would collect prescribed levies payable during a specified remittance period from either intermediaries (such as appointed insurance agents) or from policy holders directly and remit the levies to IA, and provides for the consequences for failure of authorized insurers and policy holders respectively to remit and pay the prescribed levies to IA.

² The Insurance Companies Ordinance (Cap. 41) will be renamed as the Insurance Ordinance (Cap. 41) when section 4 of the Insurance Companies (Amendment) Ordinance 2015 (Ord. No. 12 of 2015) comes into operation on 26 June 2017 (see L.N. 71 of 2017).

17. L.N. 118 specifies the classes of insurance business, the types of contract of insurance, and the rates of the levies to which section 134(1) applies. The Schedule to L.N. 118 provides for the rates of levy on premiums of insurance policies payable by policy holders. The levy rate will start at 0.04% from 1 January 2018 to 31 March 2019 and is to be increased gradually to reach the target level of 0.1% from 1 April 2021 onwards.

18. According to paragraph 16 of the LegCo Brief (File Ref.: INS/2/3C(2017)) issued by the Financial Services and the Treasury Bureau dated 7 June 2017, a three-month public consultation on the key legislative proposals for the establishment of IA, including the proposals on the funding mechanism, was held from October 2012 to January 2013 and general support was received. The Administration has also been engaging the insurance industry through the Hong Kong Federation of Insurers since February 2016 to seek views on the levy collection mechanism and other implementation details relating to the levy.

19. As advised by the Clerk to the Panel on Financial Affairs, the Panel was consulted on the proposal to collect levy on insurance premiums from policy holders at the meeting on 15 November 2016. Members of the Panel did not object to the proposal. Some members suggested that the Administration should step up efforts in publicity and public education on the proposed levy to enhance policy holders' understanding of the details, and expedite work in developing various guidelines in collaboration with IA and the insurance industry for implementing the new regulatory regime, including those on levy collection.

20. L.N. 117 (except section 3(7) insofar as it relates to paragraph (c) of the definition of "intermediary") and L.N. 118 come into operation on 1 January 2018. Paragraph (c) of the definition of "intermediary" in section 3(7) of L.N. 117 which refers to "a licensed insurance intermediary" will come into operation on the day on which section 5(15) (insofar as it relates to the new definition of "licensed insurance intermediary") of Ord. No. 12 of 2015 comes into operation.³

Pharmacy and Poisons (Amendment) (No. 3) Regulation 2017 (L.N. 119)

21. L.N. 119 is made by the Pharmacy and Poisons Board ("PPB") under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health. It amends the Pharmacy and Poisons Regulations (Cap. 138A) by adding to Division A of Schedule 1 to Cap. 138A,

³ The term "licensed insurance intermediary" is defined in section 5(15) of the Insurance Companies (Amendment) Ordinance 2015 (Ord. No. 12 of 2015) to mean a licensed insurance agent or a licensed insurance broker. This definition will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Division A of Schedule 3 to Cap. 138A and Division A of Part 1 of the Poisons List set out in Schedule 10 to Cap. 138A ("Poisons List") seven substances ("the relevant substances"), namely, Afoxolaner and its salts, Firocoxib and its salts, Fluralaner and its salts, Ixekizumab, Necitumumab, Tafamidis and its salts, and Velpatasvir and its salts.

22. The effect of the above amendments is that the substances included in Schedule 1 to Cap. 138A are subject to restrictions concerning their sale, supply, labelling and storage, and the substances in Schedule 3 to Cap. 138A can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Further, the substances included in the Poisons List can only be sold on registered premises of an authorized seller of poisons by a registered pharmacist or in the presence and under the supervision of a registered pharmacist.

23. According to paragraph 4 of the LegCo Brief (File Ref.: FHB/H/23/4) issued by the Food and Health Bureau in June 2017, PPB considers that the amendments are appropriate in view of the potency, toxicity and potential side effects of the relevant substances. Members may refer to Annex B to the LegCo Brief for details of the relevant substances.

24. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 119.

25. L.N. 119 came into operation on 9 June 2017 (i.e. the day on which it was published in the Gazette).

Concluding observations

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

Prepared by

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