

立法會
Legislative Council

LC Paper No. LS1/17-18

**Paper for the House Committee Meeting
on 13 October 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 6 October 2017**

Tabling in LegCo : Council meeting of 11 October 2017

Amendment to be made by : Council meeting of 8 November 2017 (or that of 29 November 2017 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION RELATING TO THE
COMMISSIONING OF THE HONG
KONG-ZHUHAI-MACAO BRIDGE HONG KONG PORT**

**Import and Export (Electronic Cargo Information)
(Amendment) Regulation 2017** (L.N. 152)

**Immigration (Places of Detention) (Amendment) Order
2017** (L.N. 153)

**Immigration Service (Designated Places) (Amendment)
Order 2017** (L.N. 161)

**Closed Area (Hong Kong-Zhuhai-Macao Bridge Hong Kong
Port and Hong Kong Link Road) Order** (L.N. 162)

**Hong Kong-Zhuhai-Macao Bridge Hong Kong Port and
Hong Kong Link Road Closed Area (Permission to Enter)
Notice** (L.N. 163)

L.N. 152

The Import and Export (Electronic Cargo Information) Regulation (Cap. 60L) prescribes the coverage and operation details of the Road Cargo

System ("ROCARS"), an electronic cargo information system for customs clearance of road cargoes. Schedule 2 to Cap. 60L sets out the locations of customs clearance point to which ROCARS applies.¹

2. L.N. 152, which is made by the Chief Executive ("CE") in Council under section 31 of the Import and Export Ordinance (Cap. 60), adds the Hong Kong-Zhuhai-Macao Bridge Hong Kong Port ("HZMB HKP") to Schedule 2 to Cap. 60L. The legal effect of L.N. 152 is that the Commissioner of Customs and Excise, or a Deputy or Assistant Commissioner of Customs and Excise, may designate an area within HZMB HKP as a customs clearance point for the purpose of ROCARS operation.

3. According to paragraphs 3 and 4 of the Legislative Council ("LegCo") Brief (File Ref: CITB CR 89/14/21/1) issued by the Commerce and Economic Development Bureau in October 2017, HZMB HKP will be a new location for customs clearance of road cargoes in Hong Kong upon the commissioning of the Hong Kong-Zhuhai-Macao Bridge ("HZMB").

4. As advised by the Clerk to the Panel on Commerce and Industry, an information paper entitled "Proposed Technical Amendment to the Import and Export (Electronic Cargo Information) Regulation (Cap. 60L) to tie in with the commissioning of the Hong Kong-Zhuhai-Macao Bridge Hong Kong Port", which sought to inform the Panel of the Administration's proposed amendment to Cap. 60L, was circulated to Panel members and all other Members vide LC Paper No. CB(1)1305/16-17(01) on 12 July 2017. Members had not made any request for discussion of the subject at a Panel meeting.

5. L.N. 152 comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

L.N. 153 and L.N. 161 to L.N. 163

6. L.N. 153 and L.N. 161 to L.N. 163 are subsidiary legislation relating to the setting aside of places of detention and declaration of closed areas etc. for the purposes of HZMB. The relevant provisions are summarized below.

¹ At present, such locations are Lok Ma Chau Boundary Control Point ("BCP"), Man Kam To BCP, Sha Tau Kok BCP and the Clearance Area of the Shenzhen Bay Port Hong Kong Port Area.

L.N. 153

7. L.N. 153 is made by the Secretary for Security ("S for S") under section 35(1) of the Immigration Ordinance (Cap. 115). It amends Schedule 3 to the Immigration (Places of Detention) Order (Cap. 115B) by adding the area within HZMB HKP that is set aside as detention quarters for use by the Immigration Department ("the Department"). The legal effect of L.N. 153 is that the newly added area becomes a place at which a person required or authorized to be detained by or under Cap. 115 may be so detained.

L.N. 161

8. L.N. 161 is made by S for S under section 13A(9) of the Immigration Service Ordinance (Cap. 331). It amends the Schedule to the Immigration Service (Designated Places) Order (Cap. 331B) by adding the area within HZMB HKP that is set aside as detention quarters for use by the Department. The legal effect of L.N. 161 is that the newly added area becomes a designated place for the purposes of section 13A of Cap. 331 (in relation to detention of persons arrested by members of the Immigration Service).

L.N. 162

9. L.N. 162 is made by CE under section 36(1) of the Public Order Ordinance (Cap. 245) after consultation with the Executive Council to declare certain areas located at or adjacent to HZMB HKP and the Hong Kong-Zhuhai-Macao Bridge Hong Kong Link Road ("HKLR") as closed areas under Cap. 245 ("Closed Areas") as shown in the maps in Schedules 1 and 3 to L.N. 162. The legal effect of L.N. 162 is that no person shall enter or leave the Closed Areas without a permit issued under section 37 of Cap. 245 or permission granted under section 38A of Cap. 245.

L.N. 163

10. L.N. 163 is made by the Commissioner of Police under section 38A of Cap. 245 to grant general permission to five categories of persons to enter or leave the Closed Areas at any time subject to certain conditions as specified in L.N. 163. These categories of persons include the driver of and cross-boundary passenger on a road vehicle to the Mainland of China or Macao (leaving Hong Kong via HZMB HKP and HKLR), and the driver of and cross-boundary passenger on a road vehicle from the Mainland of China or Macao (entering Hong Kong via HKLR).

11. Members may refer to the LegCo Brief (File Ref.: SBCR 1/606/16) issued by the Security Bureau in October 2017 for further details.

12. As advised by the Clerk to the Panel on Security, an information paper regarding the proposal to gazette subsidiary legislation relating to the operations of HZMB HKP was circulated to members of the Panel and all other non-Panel Members vide LC Paper No. CB(2)1978/16-17(01) on 28 July 2017. Members were advised of the Administration's plan to table the relevant subsidiary legislation at LegCo for negative vetting after the 2017-2018 legislative session begins.

Commencement of L.N. 153 and L.N. 161 to L.N. 163

13. L.N. 153 and L.N. 161 to L.N. 163 come into operation on a day to be appointed by S for S by notice published in the Gazette.

**PART II FIXED PENALTY FOR DRIVING OFFENCES RELATING
TO THE USE OF THE HONG KONG-ZHUHAI-MACAO
BRIDGE HONG KONG LINK ROAD**

**Fixed Penalty (Criminal Proceedings) (Amendment)
Regulation 2017** **(L.N. 156)**

14. L.N. 156 is made by the Secretary for Transport and Housing under section 11 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) to amend the list of offences and fixed penalty in Form 1 in the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A).

15. The amendments in L.N. 156 are made to reflect in Form 1 in the Schedule to Cap. 240A the amendments to the Schedule to Cap. 240 effected by a resolution passed by LegCo under section 12 of Cap. 240 on 28 June 2017 (L.N. 139 of 2017) to provide for the fixed penalties of \$450 for certain driving offences relating to the use of the Hong Kong Boundary Crossing Facilities and HKLR.

16. According to paragraph 8 of the LegCo Brief (File Ref: THB(T) CR1/55/1/4661/00) issued by the Transport and Housing Bureau ("THB") dated 4 October 2017, as L.N. 156 contains consequential amendments to L.N. 139 of 2017, no separate public consultation is considered necessary.

17. As advised by the Clerk to the Panel on Transport, the Panel has not been consulted on L.N. 156.

18. L.N. 156 comes into operation on 15 December 2017, which will tie in with the commencement of L.N. 139 of 2017.

PART III SUBSIDIARY LEGISLATION RELATING TO FEES IN CONNECTION WITH ROAD TRAFFIC MATTERS

Road Traffic (Driving Licences) (Amendment) Regulation 2017 (L.N. 157)

Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2017 (L.N. 158)

Road Traffic Ordinance (Amendment of Schedule 9) Order 2017 (L.N. 159)

Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 3) Regulation 2017 (L.N. 160)

L.N. 157 to L.N. 159

19. L.N. 157 and L.N. 158 are made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 8(1A) and section 6(2) of the Road Traffic Ordinance (Cap. 374) respectively. L.N. 159 is made by CE under section 88P of Cap. 374 after consultation with the Executive Council.

20. L.N. 157 to L.N. 159 respectively amend the Second Schedule to the Road Traffic (Driving Licences) Regulations (Cap. 374B), Schedule 2 to the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E), and Schedule 9 to Cap. 374 to increase 13 items of fees relating to road traffic matters as follows:

	Fee items	Existing fee level (\$)	Adjusted fee level (\$)	Increase in percentage
1.	Fee for the issue of a record of traffic offence convictions under section 75(5) of Cap. 374	55	61	+10.9%
2.	Fee for the issue of a certificate of no recorded traffic offence conviction under section 75(5) of Cap. 374	55	61	+10.9%
3.	Fee for the registration of a motor vehicle under regulation 5 of Cap. 374E	91	100	+9.9%

	Fee items	Existing fee level (\$)	Adjusted fee level (\$)	Increase in percentage
4.	Fee for the issue of a duplicate vehicle licence for rickshaw under regulation 59(1) of Cap. 374E	12	20	+66.7%
5.	Fee for the issue of a duplicate trade licence under regulation 59(2) of Cap. 374E or other miscellaneous permits issued under Part VIII of Cap. 374E	75	86	+14.7%
6.	Fee for the issue of a vehicle licence for 12 months for a rickshaw under regulation 40(1) of Cap. 374E	55	61	+10.9%
7.	Fee for the issue of an excess passengers permit under regulation 52(1) of Cap. 374E	170	185	+8.8%
8.	Fee for the issue of a movement permit under regulation 53(1) of Cap. 374E	670	820	+22.4%
9.	Fee for the issue of a long road permit under regulation 54 of Cap. 374E	200	240	+20%
10.	Fee for the issue of a wide road permit under regulation 54 of Cap. 374E	200	240	+20%
11.	Fee for the issue of an advertising vehicle permit under regulation 58A of Cap. 374E	110	200	+81.8%
12.	Fee for the issue of an expressway permit under regulation 50A of Cap. 374E	145	175	+20.7%
13.	Fee payable for the designation, or the renewal of the designation, of a driving school under section 88P of Cap. 374	18 150	19 950	+9.9%

21. According to the LegCo Brief (File Ref: THB(T) CR25/5591/79) issued by THB dated 4 October 2017, the proposed fee increases seek to bring the 13 items of fees in line with the "user pays" principle and to achieve full-cost recovery gradually. Members may refer to the LegCo Brief for further information.

L.N. 160

22. L.N. 160 is made by CE under section 5(3) of Cap. 374 to amend Schedule 2 to Cap. 374E to remove the references to three obsolete fee items in that Schedule, namely the fees for international fiscal permit, international certificate, and certificate of maximum load and maximum permissible weight.

23. As advised by the Clerk to the Panel on Transport, the Panel was consulted by the Administration on the amendment proposal at its meeting on 19 May 2017. Members in general did not object to the proposal. At the meeting, a member suggested a bigger increase in the fee for the issue of advertising vehicle permit under regulation 58A of Cap. 374E so as to achieve an improved cost recovery rate and to avoid a steep increase in future. According to paragraph 15 of the LegCo Brief, the Administration has taken into account the suggestion in making the amendment in L.N. 158 by increasing the advertising vehicle permit fee from \$110 to \$200 which represents a cost recovery rate of 23%.

Commencement

24. L.N. 157 to L.N. 160 come into operation on 29 December 2017.

PART IV MISCELLANEOUS

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) (Amendment) Order 2017 (L.N. 154)

25. Under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), CE in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

26. The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("HKSARG") and the Government of New Zealand ("NZG") signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income ("Agreement") together with a protocol to the Agreement ("the First Protocol") on 1 December 2010. The arrangements in the Agreement and the First Protocol have effect by virtue of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) Order (Cap. 112BV).

27. In June 2017, HKSARG and NZG signed the Second Protocol to amend the First Protocol. Paragraph 1 of the Second Protocol deletes paragraph 4(a) from the First Protocol which provides that the contracting parties are not required to exchange information on an automatic or a spontaneous basis, and corrects a typo in paragraph 4(b) of the First Protocol by amending the term "Office of the Ombudsmen" to "Office of the Ombudsman". Paragraph 2 of the Second Protocol provides that the Second Protocol shall enter into force after the contracting parties have completed their ratification procedures.

28. L.N. 154 is made by CE in Council under section 49(1A) of Cap. 112 to give effect to the Second Protocol by making the following amendments to Cap. 112BV:

- (a) adding new provisions to declare that the arrangements in paragraphs 1 and 2 of the Second Protocol to be double taxation relief arrangements under section 49(1A) of Cap. 112 and that it is expedient that those arrangements shall have effect;
- (b) adding a new Part to the Schedule to Cap. 112BV to set out the arrangements in paragraphs 1 and 2 of the Second Protocol; and
- (c) making consequential amendments to Cap. 112BV.

29. The effects of the new provisions are that (a) the arrangements in paragraphs 1 and 2 of the Second Protocol have effect in relation to tax under Cap. 112; and (b) the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of New Zealand, have effect in relation to any tax of New Zealand that is the subject of that provision.

30. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 154.

31. L.N. 154 comes into operation on 22 December 2017.

**Merchant Shipping (Limitation of Shipowners Liability)
Ordinance (Amendment of Schedule 2) Order 2017 (L.N. 155)**

32. Section 12 of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) provides that the provisions of the Convention on Limitation of Liability for Maritime Claims, 1976 ("the Convention") set out in Schedule 2 to Cap. 434 have the force of law in Hong Kong.

33. L.N. 155 is made by CE in Council under section 28 of Cap. 434 to amend Article 6 of Schedule 2 to Cap. 434. The amendments incorporate into Cap. 434 the latest limits adopted by the International Maritime Organization ("IMO") concerning the liability of shipowners and salvors for claims for loss of life or personal injury and other claims, such as claims for property damage, arising from maritime incidents. The new limits are as follows:

Tonnage of ship	Liability limit for claims for loss of life or personal injury (in Special Drawing Right ("SDR")) ²		Liability limit for claims for property damage (in SDR)	
	Current	New	Current	New
For a ship with a tonnage not exceeding 2 000 tons	2 million	3.02 million	1 million	1.51 million
For a ship with a tonnage in excess of 2 000 tons, for each ton from 2 001 to 30 000 tons	800	1 208	400	604
For a ship with a tonnage in excess of 2 000 tons, for each ton from 30 001 to 70 000 tons	600	906	300	453
For a ship with a tonnage in excess of 2 000 tons, for each ton in excess of 70 000 tons	400	604	200	302

34. According to paragraph 11 of the LegCo Brief (File Ref: THB (T) MA 30/22 Pt.8) issued by THB in October 2017, the Administration consulted the Panel on Economic Development, as well as the Shipping Consultative Committee, Port Operations Committee and the Local Vessels Consultative Committee of the Marine Department. They supported the proposed amendment to Article 6 of Schedule 2 to Cap. 434.

35. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on the proposed legislative amendment at its meeting

² According to paragraph 3 of the LegCo Brief (File Ref: THB (T) MA 30/22 Pt.8) issued by the Transport and Housing Bureau in October 2017, SDR is the unit of measurement for monetary liability, which is an interest-bearing international reserve asset created by the International Monetary Fund ("IMF") in 1969. IMF publishes the daily conversion rates for SDR. For example, as of 2 October 2017, SDR 1 is approximately equivalent to US\$ 1.41.

on 26 June 2017. Members in general supported the proposal to bring the local legislation in line with the latest international marine-related requirements.

36. L.N. 155 comes into operation on 4 December 2017.

**Trainee Solicitors (Amendment) Rules 2017
(Commencement) Notice (L.N. 164)**

37. By L.N. 164, the President of The Law Society of Hong Kong ("Law Society") appoints 8 January 2018 as the day on which the Trainee Solicitors (Amendment) Rules 2017 gazetted on 26 May 2017 (L.N. 104 of 2017) come into operation.

38. L.N. 104 of 2017 amends rule 20 of the Trainee Solicitors Rules (Cap. 159J) mainly to (a) set out more specifically the matters to be included in the certificate that a disbarred barrister who wishes to become a solicitor has to obtain from the Bar Council of the Hong Kong Bar Association ("Bar Council") before applying to the Law Society for exemption from employment under a trainee solicitor contract; and (b) require the applicant to provide a statutory declaration to the Law Society stating whether there are any outstanding allegations or complaints against him/her to be dealt with by the Bar Council, and if so, the particulars of those allegations or complaints.

39. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 164.

Concluding observations

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

Prepared by

Rachel DAI (L.N. 152, L.N. 154 to L.N. 160 and L.N. 164)

Cliff IP (L.N. 153 and L.N. 161 to L.N. 163)

Assistant Legal Advisers

Legislative Council Secretariat

12 October 2017