

**立法會**  
**Legislative Council**

LC Paper No. LS8/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 20 October 2017**

**Tabling in LegCo** : Council meeting of 25 October 2017

**Amendment to be made by** : Council meeting of 22 November 2017 (or that of 13 December 2017 if extended by resolution)

**PART I SHIPPING AND PORT CONTROL**

**Shipping and Port Control (Amendment) (No. 2) Regulation 2017** (L.N. 171)

**Merchant Shipping (Local Vessels) (General) (Amendment) (No. 2) Regulation 2017** (L.N. 178)

**Merchant Shipping (Local Vessels) (General) (Amendment) (No. 3) Regulation 2017** (L.N. 179)

**Shipping and Port Control Regulations (Amendment of Schedules) Notice 2017** (L.N. 180)

L.N. 171 and L.N. 178

Under the Shipping and Port Control Regulation (Cap. 313A), specified vessels (except local vessels) are required to report their movements to Vessel Traffic Centre ("VTC") through designated very high frequency ("VHF") channels when they sail through calling-in points or from one VHF sector to another. Similar reporting requirements applicable to local vessels are provided in the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F).

2. L.N. 171 is made by the Chief Executive in Council under section 80 of the Shipping and Port Control Ordinance (Cap. 313) to amend Cap. 313A mainly to:

- (a) increase the number of VHF sectors from three to five by adding Lantau South VHF Sector and Harbour East VHF sector;
- (b) adjust the number of calling-in points situated in waters of Hong Kong from 28 to 15 as a result of the abovementioned re-alignment of VHF sectors; and

- (c) streamline the procedure of reporting to VTC by repealing certain existing reporting requirements (e.g. requirements of making pre-departure report and departure underway report).

3. L.N. 178 is made by the Secretary for Transport and Housing ("the Secretary") under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) to amend Cap. 548F to introduce for local vessels reporting procedures similar to those provided in L.N. 171.

4. According to paragraph 5 of Legislative Council ("LegCo") Brief on Legislative Amendments to Improve Vessel Traffic Services (File Ref.: THB(T)PML CR 8/10/60/15) issued by the Transport and Housing Bureau ("THB") in October 2017, the amendments in L.N. 171 and L.N. 178 are made to improve vessel traffic services following a study on Hong Kong vessel traffic services commissioned by the Marine Department in 2013. According to the Administration, the increase in the VHC sectors would enable vessels to communicate with VTC more promptly and efficiently. According to paragraph 6 of the LegCo Brief, certain reporting requirements are repealed as they are no longer necessary with the advancement of navigational technology. According to paragraph 14 of the LegCo Brief, the Administration consulted the Pilotage Advisory Committee and the Port Operations Committee on the above amendments on 7 January and 3 March 2016 respectively.

5. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted at the meeting of 24 April 2017 and members of the Panel in general supported the proposal.

6. L.N. 171 and L.N. 178 come into operation on 1 March 2018.

#### L.N. 179 and L.N. 180

7. L.N. 179 and L.N. 180 are respectively made by the Secretary under section 89 of Cap. 548 and the Director of Marine under regulation 72(1) of Cap. 313A. These two items of subsidiary legislation relate to the alignment of principal fairways within Hong Kong waters.

8. L.N. 180 amends Cap. 313A to:

- (a) provide for the boundaries of three new principal fairways on the north side of Lantau Island (namely the Urmston Road Fairway, the Castle Peak Fairway and the Ha Pang Fairway);
- (b) re-align the boundaries of four existing principal fairways in the western part of Victoria Harbour (namely the Southern Fairway, the North Green Island Fairway, the Northern Fairway and the Central Fairway); and

- (c) provide for the boundaries of a new prohibited fishing area that joins the Ma Wan Fairway, the Kap Shui Mun Fairway and the Ha Pang Fairway.

9. L.N. 180 also makes corresponding adjustments to the boundaries of the areas of the waters in which a vessel may only proceed within speed limits ("speed limit zone") and to the boundaries of anchorages adjacent to the re-aligned principal fairways.

10. L.N. 179 amends Cap. 548F mainly to adjust the boundaries of different speed limit zones for local vessels to align with the boundaries of principal fairways as re-aligned under L.N. 180.

11. According to paragraphs 4 and 7 of LegCo Brief (File Ref.: THB(T)PML CR 8/10/60/15) on Legislative Amendments to Regulate Marine Safety issued by the THB in October 2017, the amendments in L.N. 179 and L.N. 180 are necessary to regulate marine safety in view of (a) the heavy marine traffic around North Lantau following the development of neighbouring ports in the Pearl River Delta; and (b) increasing marine traffic and sizes of vessels.

12. According to paragraphs 13 and 14 of the LegCo Brief, the Administration has consulted the Port Operations Committee, Local Vessels Advisory Committee, the Pilotage Advisory Committee and High Speed Craft Consultative Committee on the amendments. The Administration has noted the reservation expressed by the fishing industry on the prohibition of fishing activities in the area concerned but maintains that the prohibition is essential in the interest of navigation safety for both the fishing industry and marine traffic.

13. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on the proposal at the meeting of 24 April 2017. While most members supported the early implementation of the proposal to enhance marine safety, some members were concerned about the impact of establishing a new prohibited fishing area on the livelihood of fishermen. The Administration considered the suggestions raised at a meeting of the Panel with deputations held on 21 July 2017, including redirection of marine traffic but maintained the view that fishing should be prohibited to safeguard the safety of all vessels navigating in the area given the heavy marine traffic along the proposed principal fairways. The Administration's response to the suggestions was issued to members on 8 September 2017 (LC Paper No. CB(4)1577/16-17(01)).

14. L.N. 179 and L.N. 180 come into operation on 1 February 2018.

## **PART II ELECTORAL MATTERS**

**Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2017 (L.N. 172)**

**Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2017 (L.N. 173)**

**Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) (Amendment) Regulation 2017 (L.N. 174)**

15. L.N. 172 to L.N. 174 are made by the Electoral Affairs Commission under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) to amend the following regulations:

- (a) the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A);
- (b) the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B); and
- (c) the Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K).

16. Currently, electors/voters may make written requests to the Electoral Registration Officer ("ERO") to alter their names or other personal particulars as recorded in the existing final registers under Cap. 541A, Cap. 541B and Cap. 541K.<sup>1</sup> L.N. 172 to L.N. 174 mainly aim to:

- (a) expressly empower ERO to require the electors/voters to submit documentary evidence in an application for the change of principal residential address in the relevant final registers and provide for the procedure for ERO to process the application; and
- (b) advance the relevant statutory deadlines for electors/voters to submit the application for change of registration particulars by 30 days (i.e. for the Geographical Constituencies, Functional Constituencies and Election

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<sup>1</sup> Section 11 of Cap. 541A, section 26 of Cap. 541B and section 20 of Cap. 541K.

Committee Subsectors, the deadline will fall on 2 April for a non-District Council election year or 2 June for a District Council election year; and for Rural Representatives elections, the deadline will fall on 16 June).

17. L.N. 172 to L.N. 174 also make consequential amendments and other amendments (for example, amendments relating to the effect of inclement weather warning on the computation of certain dates and periods).

18. According to the LegCo Brief (File Ref.: REO GC/51/0 C Pt. 2) issued by the Registration and Electoral Office in October 2017, the amendments in L.N. 172 to L.N. 174 are made in the light of the Consultation Report on Enhancement of Voter Registration System published by the Constitutional and Mainland Affairs Bureau on 21 January 2016. According to the Administration, the address proof requirement would enable the ERO to verify the address information and thus enhance the accuracy of the information contained in the registers of the electors while the advancement of statutory deadlines would allow sufficient time for the ERO to process the relevant applications.

19. As advised by the Clerk to the Panel on Constitutional Affairs, the Panel was consulted at its meeting on 19 April 2017 on the proposed requirement of submitting address proofs. While members in general expressed support for introducing the proposed requirement, some members considered that the requirement should be introduced to both applications for new registration and those for change of registration particulars in order to tackle vote-rigging more effectively. As regards the proposed advancement of the statutory deadlines for applications for change of registration particulars, members did not raise any objection.

20. L.N. 172 to L.N. 174 come into operation on 1 February 2018.

### **PART III BASEL III IMPLEMENTATION**

**Banking (Capital) (Amendment) Rules 2017** (L.N. 175)

**Banking (Liquidity) (Amendment) Rules 2017** (L.N. 176)

**Banking (Specification of Multilateral Development Bank) (Amendment) Notice 2017** (L.N. 177)

#### L.N. 175

21. L.N. 175 is made by the Monetary Authority ("MA") under section 97C of the Banking Ordinance (Cap. 155) after consultation with the Financial Secretary

and certain specified persons<sup>2</sup> ("Statutory Consultees") to amend the Banking (Capital) Rules (Cap. 155L). Its main purpose is to implement the Basel III capital standards promulgated by the Basel Committee on Banking Supervision ("BCBS") relating to the securitization exposures<sup>3</sup>, leverage ratio<sup>4</sup> and expected loss provisions<sup>5</sup> of an authorized institution<sup>6</sup> ("AI").

22. The major amendments in L.N. 175 include:

- (a) revising the framework in Part 7 of Cap. 155L for calculating the *credit risk* for securitization exposures (sections 46 and 47), but the *market risk* (Part 8) for securitization exposures held in an AI's trading book will continue to be calculated in accordance with the pre-amended Cap. 155L as currently in force (sections 48 to 50);
- (b) adding a new Part 1C to Cap. 155L to prescribe a minimum leverage ratio of 3% to be maintained by an AI and the basis of consolidation to be used to calculate the leverage ratio (section 5);
- (c) amending the definitions of "collective provisions" and "specific provisions" in section 2(1) of Cap. 155L to implement the interim regulatory capital treatment of expected loss provisions under Hong Kong Financial Reporting Standard 9 (section 3(2) and (20)); and
- (d) increasing the annual turnover threshold for defining "small business" in section 51(1) of Cap. 155L from HK\$50 million to HK\$100 million (section 19(2)) and specifying "Hong Kong Science and Technology Parks Corporation" as a domestic public sector entity for preferential risk-weighting treatment (section 53).

23. It is noted that section 47 of L.N. 175 contains a grammatical error.<sup>7</sup> Upon enquiry by the Legal Service Division ("LSD"), the Administration replies that the error is noted and will be corrected when the earliest opportunity arises. LSD considers that the error is unlikely to cause any interpretation difficulties.

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<sup>2</sup> The persons are the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (see section 97C(2) of Cap. 155).

<sup>3</sup> The new methodologies are designed to reduce AIs' mechanistic reliance on external credit ratings, and put more focus on the risk characteristics (e.g. the seniority and maturity of a tranche) of the underlying securitization exposures, in calculating the risk-weighted capital.

<sup>4</sup> The newly introduced leverage ratio is designed to supplement the risk-based capital adequacy ratios in preventing the excessive build-up of leverage by banks.

<sup>5</sup> The new standard requires firms to provide for the impairment of financial assets based on an "expected loss" approach instead of the existing "incurred loss" approach.

<sup>6</sup> Under section 2(1) of Cap. 155, "authorized institution" means a bank, a restricted licence bank or a deposit-taking company.

<sup>7</sup> The new section 242(6) of Cap. 155L refers to "the securitization exposure are backed" etc.

L.N. 176

24. Made by MA under section 97H of Cap. 155 after consultation with the Statutory Consultees, L.N. 176 amends the Banking (Liquidity) Rules (Cap. 155Q) to introduce a new two-tier regime requiring certain AIs to finance their activities with sufficiently stable sources of funding. Under L.N. 176:

- (a) category 1 institutions<sup>8</sup> designated by MA under rule 3(1) of Cap. 155Q must maintain a net stable funding ratio ("NSFR")<sup>9</sup> of not less than 100%, subject to self-rectification of shortfall (rule 5);
- (b) category 2A institutions<sup>10</sup> to be designated by MA under the new rule 3A(1) of Cap. 155Q must maintain an average core funding ratio ("CFR") of at least 50% in each calendar month during 2018, and not less than 75% in each calendar month from 1 January 2019 (rules 4 and 5);
- (c) the new Part 9 of and Schedule 6 to Cap. 155Q provide for the calculation of NSFR, CFR and related factors (rules 22 and 26); and
- (d) the definition of "relevant liquidity event" in rule 14 of Cap. 155Q is amended to cover an AI's failure to maintain the minimum NSFR or CFR (as applicable), so that the AI must immediately notify MA and provide MA with any particulars that MA requests (rule 12).

25. L.N. 176 also contains provisions relating to valuation, bases of calculation and associated entities (rules 9 to 11), and those which amend, relocate or add certain definitions (rules 3 and 17) or move the existing Tables 1 to 4 to the new Schedule 4A to Cap. 155Q (rules 15, 16, 19, 20 and 24).

26. Upon LSD's enquiry, the Administration confirms that L.N. 175 and L.N. 176 in all material respects accurately reflect the latest BCBS standards on securitization exposures, leverage ratio, expected loss provisions and NSFR requirements.

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<sup>8</sup> MA has specified as category 1 institutions those AIs with total assets, or external claims and liabilities, of HK\$250 billion or more. There are currently 14 category 1 institutions.

<sup>9</sup> According to paragraph 4 of the Explanatory Note of L.N. 176, the NSFR requirements seek to reduce funding risk of category 1 institutions over a longer time horizon.

<sup>10</sup> MA may designate an AI as a category 2A institution after taking into account the size of its business operation and the liquidity risks associated with it (section 3A(2) of Cap. 155Q). According to the Administration, category 2A institutions will include AIs with total assets of HK\$20 billion or more (locally incorporated AIs) or HK\$100 billion or more (foreign bank branches). 34 AIs are expected to meet these criteria and be subject to the CFR regime.

L.N. 177

27. Under section 2(19) of Cap. 155, MA may by notice published in the Gazette specify to be a multilateral development bank ("MDB") for the purposes of Cap. 155 any bank or lending or development body established by agreement between, or guaranteed by, two or more countries, territories or international organizations other than for purely commercial purposes. The Banking (Specification of Multilateral Development Bank) Notice (Cap. 155N) currently specifies 14 MDBs. Exposures to MDBs are treated more favourably for the purposes of calculating an AI's capital adequacy ratio and liquidity ratio.

28. L.N. 177 amends Cap. 155N to specify the International Development Association ("IDA") as a new MDB under Cap. 155. According to paragraphs 3 and 13 of the LegCo Brief (File Ref: B&M/2/1/63C) issued by the Financial Services and the Treasury Bureau and Hong Kong Monetary Authority ("HKMA") on 17 October 2017, this amendment is made to implement BCBS's decision made in November 2016 to include IDA, a member of the World Bank Group, as an MDB for preferential treatment under the capital regime. L.N.177 also amends the Chinese text of Cap. 155N to incorporate the Chinese names of seven existing MDBs<sup>11</sup>.

29. Members may refer to the LegCo Brief for further details. According to paragraph 21 of the LegCo Brief, the banking industry has been engaged in formulating the legislative proposals for which there is general support. According to the Administration, relevant technical or drafting comments from the industry have been taken into account in finalizing the rules.

30. The Clerk to the Panel on Financial Affairs has advised that at the meeting on 29 May 2017 when the Panel was briefed on the work of HKMA, members were informed of HKMA's plan to amend Cap. 155L and Cap. 155Q to implement the relevant Basel III standards promulgated by BCBS. Members had no objection to the plan. The Panel has not been consulted on L.N. 177.

31. L.N. 175 to L.N. 177 come into operation on 1 January 2018.

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<sup>11</sup> The seven MDBs are International Bank for Reconstruction and Development, International Finance Corporation, African Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, European Investment Bank, and Nordic Investment Bank. Upon LSD's enquiry on the reason for not incorporating the Chinese names of the other five MDBs into the Chinese text of Cap. 155N, the Administration advises that local legislation does not contain Chinese renditions of the English names of these MDBs.



## **Concluding observations**

32. LSD is still scrutinizing L.N. 172 to L.N. 174. Apart from the matter mentioned in paragraph 23 above, no difficulties have been identified in relation to the legal and drafting aspects of L.N. 171 and L.N. 175 to L.N. 180.

Prepared by

Clara TAM (L.N. 171 to L.N. 174 and L.N. 178 to L.N. 180)

LOO Chi-pong, Bonny (L.N. 175 to L.N. 177)

Assistant Legal Advisers

Legislative Council Secretariat

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