

**立法會**  
**Legislative Council**

LC Paper No. LS37/17-18

**Paper for the House Committee Meeting  
on 16 March 2018**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 23 February 2018**

**Tabling in LegCo** : Council meeting of 28 February 2018

**Amendment to be made by** : Council meeting of 28 March 2018 (or that of 25 April 2018 if extended by resolution)

**PART I PROPERTY MANAGEMENT SERVICES**

**Property Management Services (Levy) Regulation** (L.N. 28)

**Property Management Services Ordinance (Commencement)  
Notice 2018** (L.N. 29)

The Property Management Services Ordinance (Cap. 626) was enacted in May 2016 to provide for the establishment of the Property Management Services Authority ("the Authority") and the regulation and control of the provision of property management services. By the Property Management Services Ordinance (Commencement) Notice 2016 (L.N. 98 of 2016), certain provisions<sup>1</sup> of Cap. 626 which mainly relate to the establishment of the Authority came into operation on 24 October 2016.

L.N. 29

2. L.N. 29 is made by the Secretary for Home Affairs ("SHA") under section 1(2) of Cap. 626 to appoint 1 July 2018 as the day on which Part 8 of Cap. 626 comes into operation. The provisions in Part 8 of Cap. 626 relate to matters including the payment and collection of a levy payable by the purchaser for a conveyance on sale of immovable property chargeable with stamp duty under head 1(1) in the First Schedule to the Stamp Duty Ordinance (Cap. 117)

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<sup>1</sup> Sections 1 and 2, Part 7, sections 66(2) and 68, Schedules 3 and 5 of Cap. 626.

("leviable instrument"), the recovery of the levy and penalty, and the Authority's power to remit and refund the levy or penalty paid or payable for a leviable instrument.

3. Upon our enquiries, the Administration advised that the remaining uncommenced provisions of Cap. 626 (including those relating to licensing of property management companies and practitioners) will come into operation in phases.

#### L.N. 28

4. L.N. 28 is made by SHA under section 62 of Cap. 626 to prescribe the amount of levy payable for a leviable instrument to be \$350. It also exempts the Central People's Government, the Government or incorporated public officers, persons acting in the capacity as public officers, persons such as diplomatic agents and consular officers, from the payment of the levy.

5. According to the Legislative Council ("LegCo") Brief (File Ref.: HAD HQ CR/20/3/7/(C)) issued by the Home Affairs Bureau in February 2018, the Authority is to be supported by income generated from licence fees and levies (paragraph 3). Based on the statistics on the number of conveyances on sale in the recent years, the level of levy set by the Administration is expected to generate an annual income of about \$28 million (paragraphs 6 and 7).

6. L.N. 28 comes into operation on 1 July 2018 (i.e. the day on which Part 8 of Cap. 626 comes into operation).

7. As advised by the Clerk to the Bills Committee on Property Management Services Bill formed in the Fifth LegCo, the Bills Committee noted that a levy at a level of around \$200-\$350 would be imposed on leviable instruments.

8. As advised by the Clerk to the Panel on Home Affairs, the Panel was consulted at its meeting on 22 May 2017 on the proposed financial arrangement for the Authority (including the level of the levy). Members were generally supportive of the proposed level of levy. The Panel has not been consulted specifically on the commencement date of Part 8 (i.e. 1 July 2018) as set out in L.N. 29.

## **PART II DANGEROUS DRUGS ORDINANCE**

### **Dangerous Drugs Ordinance (Amendment of Second Schedule) Order 2018 (L.N. 30)**

9. L.N. 30 is made by the Secretary for Security under section 50(2) of the Dangerous Drugs Ordinance (Cap. 134) to amend the Second Schedule to Cap. 134 by adding the Hong Kong Children's Hospital and Olive Nursing Home cum Day Care Unit for the Elderly to the list of hospitals and institutions as specified in that Schedule ("prescribed hospitals").

10. Under section 22(1)(e) and (f) of Cap. 134, a registered pharmacist or an approved person who is employed or engaged at a prescribed hospital and whose duties include the dispensing or supply of medicines for that hospital; or a sister in charge of a ward, theatre or other department in a prescribed hospital may, subject to other provisions of Cap. 134, possess and supply a dangerous drug, so far as may be necessary for the practice or exercise of his profession, function or employment. Under section 22(2), the matron of a prescribed hospital may possess and supply a dangerous drug so far as may be necessary for the purposes of the hospital and in her capacity as matron thereof.

11. Members may refer to the LegCo Brief (no reference number provided) issued by the Narcotics Division of the Security Bureau dated 21 February 2018 for further information.

12. As advised by the Clerks to the Panel on Health Services and the Panel on Security, the Administration has not consulted the Panels on L.N. 30.

13. L.N. 30 comes into operation on 30 April 2018.

## **PART III COMMENCEMENT NOTICES**

**Product      Eco-responsibility      (Regulated      Electrical  
Equipment) Regulation (Commencement) Notice (L.N. 31)**

**Promotion of Recycling and Proper Disposal (Electrical  
Equipment and Electronic Equipment) (Amendment)  
Ordinance 2016 (Commencement) Notice 2018 (L.N. 32)**

**Waste Disposal Ordinance (Application of Section 16)  
Notice 2018 (L.N. 36)**

## Background

14. The Waste Disposal Ordinance (Cap. 354) provides for the regulation of the collection and disposal of waste, related licensing and other matters. Section 16(1) of Cap. 354 stipulates, among others, that a person shall not use any land for the disposal of waste unless he has a relevant licence.

15. The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 ("Ord. No. 3 of 2016") was enacted in 2016. It amends Cap. 354, its subsidiary legislation and the Product Eco-responsibility Ordinance (Cap. 603) to provide for a regulatory scheme for the recycling and proper disposal of eight types<sup>2</sup> of regulated electrical equipment ("REE"). The Product Eco-responsibility (Regulated Electrical Equipment) Regulation (Cap. 603B) provides for matters necessary for the implementation of the regulatory scheme, including the registration of REE suppliers, amount of recycling levy, provision of recycling labels and arrangement for removal service. The Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017 (L.N. 73 of 2017) ("2017 Notice") was made in April 2017 to provide that some provisions of Ord. No. 3 of 2016 came into operation on 21 April 2017 and 19 June 2017. These provisions concern, among others, (i) the Secretary for the Environment ("SEN")'s power to make regulations on the registration of REE suppliers and to amend Schedules 6 and 7 to Cap. 603 and (ii) the definition of e-waste<sup>3</sup>.

## L.N. 31 and L.N. 32

16. L.N. 31 and L.N. 32 are made by SEN to appoint the following days on which all the provisions of (i) Ord. No. 3 of 2016 which have not taken effect under the 2017 Notice and (ii) Cap. 603B come into operation in phases:

- (a) 4 May 2018: for certain provisions of Ord. No. 3 of 2016<sup>4</sup> and Cap. 603B<sup>5</sup> mainly relating to the registration of suppliers who distribute REE and the endorsement of sellers' removal service plans by the Director of Environmental Protection ("DEP");

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<sup>2</sup> Air conditioner, refrigerator, washing machine, television, computer, printer, scanner and monitor, as set out in Schedule 6 to Cap. 603.

<sup>3</sup> Under section 2(1) of Cap. 354, "e-waste" means any electrical equipment or electronic equipment that, judging by its appearance, is an item set out in column 2 of Schedule 6 to Cap. 603 and has been abandoned.

<sup>4</sup> Section 9 of Ord. No. 3 of 2016, in so far as it relates to the new sections 33, 34, 36(3), 36(4), 41(1) (for the purpose only of enabling the endorsement of a removal service plan under that section), 41(2), 41(3) and 41(4) of Cap. 603.

<sup>5</sup> Sections 1 to 8, 22, 29 to 38, 42 to 46 of and Schedule 1 to Cap. 603B.

- (b) 1 August 2018: for certain provisions of Ord. No. 3 of 2016<sup>6</sup> and the uncommenced provisions of Cap. 603B mainly relating to the prohibition of distributing REE by suppliers without registration and the obligations of registered suppliers (including payment of the recycling levy) and of sellers (including arrangement for removal service); and
- (c) 31 December 2018: for the uncommenced provisions of Ord. No. 3 of 2016, mainly in relation to the control over the disposal, import and export of e-waste.

### L.N. 36

17. L.N. 36 is made by DEP under section 38 of Cap. 354 to appoint 31 December 2018 as the day on and from which section 16 of Cap. 354 applies in relation to any e-waste that is an item of the eight types of REE as set out in column 2 of Schedule 6 to Cap. 603. The effect is that the use of land for the disposal of such e-waste is prohibited with effect from 31 December 2018 unless under a licence from DEP.

18. Members may refer to the LegCo Brief (File ref: EP CR 9/150/28) issued by the Environment Bureau and the Environmental Protection Department ("EPD") on 21 February 2018 for further information.

19. As advised by the Clerk to the Panel on Environmental Affairs ("EA Panel"), before the enactment of Ord. No. 3 of 2016, a Bills Committee was formed to scrutinize the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015. At its meeting on 23 January 2017, the EA Panel was consulted on, among others, Cap. 603B to prescribe the operational details of the regulatory scheme. A subcommittee was formed in May 2017 to study the 2017 Notice and Cap. 603B. Members discussed a number of issues, including the registration of REE suppliers, prohibition of distributing REE by suppliers without registration, obligations of registered suppliers and sellers, new licensing/permit control on disposal, import and export of e-waste, provision of recycling labels and removal service for REE, as well as submission of returns and payment of recycling levies by registered suppliers. In response to members' concerns about the timeframe for recyclers to prepare for waste disposal licence applications in respect of e-waste, the Administration agreed to defer the commencement of the new licensing control by 18 months counting from

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<sup>6</sup> Section 9 of Ord. No. 3 of 2016, in so far as it relates to the new sections 32, 35, 36(1), 36(2), 37 to 40, 41(1) (in so far as it has not already come into operation), 41(6), 41(7), 42 and 43 of Cap. 603.

June 2017. Members may refer to the reports of the Bills Committee and the Subcommittee (LC Paper Nos. CB(1)489/15-16 and CB(1)1141/16-17) for further information.

**Protection of Endangered Species of Animals and Plants  
(Amendment) Ordinance 2018 (Commencement) Notice (L.N. 33)**

20. The Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) gives effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") in Hong Kong. The Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 ("Ord. No. 7 of 2018") was enacted in January 2018 to amend Cap. 586 and its subsidiary legislation to, among others, (a) give effect to a three-step plan to phase out local ivory trade and (b) provide for an enhanced scheme of penalties for offences relating to import, export etc. of specimens of certain endangered species as specified in Appendix I, II or III of Part 2 of Schedule 1 to Cap. 586<sup>7</sup>.

21. L.N. 33 is made by SEN under section 1(2) of Ord. No. 7 of 2018 to appoint 1 May 2018 as the day on which Ord. No. 7 of 2018 (except sections 16(2), 18, 27, 29(2) and 32(2)) comes into operation. The effect is that step one of the three-step plan to phase out local ivory trade takes effect on 1 May 2018. This step mainly concerns the ban of the import and re-export of elephant hunting trophies and certain remaining ivory items acquired after the application of CITES to elephants save and except with a licence issued in limited circumstances. The enhanced scheme of penalties stated in paragraph 20 above also takes effect on 1 May 2018.

22. Under section 1(3) of Ord. No. 7 of 2018, sections 16(2), 18, 27 (except subsections (9), (11) and (12)), 29(2) and 32(2) would come into operation on the expiry of three months beginning on the day appointed under paragraph 21 above (i.e. on 1 August 2018). These sections relate to step two of the three-step plan concerning the ban of the import and re-export of ivory (save for antique elephant ivory) acquired before the application of CITES to

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<sup>7</sup> The maximum penalties for offences in relation to the import, export etc. of specimens of species as set out in Appendix I of Part 2 of Schedule 1 to Cap. 586 are increased to a fine of HK\$5,000,000 and imprisonment for two years on summary conviction and to a fine of HK\$10,000,000 and imprisonment for 10 years on conviction on indictment. The maximum penalties for similar offences concerning specimens of species as set out in Appendix II or III are increased to a fine of HK\$500,000 and imprisonment for one year on summary conviction and to a fine of HK\$1,000,000 and imprisonment for seven years on conviction on indictment.

elephants and subjecting the commercial possession of such ivory to licensing control.

23. Members may wish to note that by virtue of section 1(4) of Ord. No. 7 of 2018, the remaining provisions of Ord. No. 7 of 2018 relating to step three of the three-step plan would come into operation on 31 December 2021. This step concerns the ban of the possession for commercial purposes of all ivory (save for antique elephant ivory) by restricting the issue of a possession licence to cases of exceptional circumstances only.

24. Members may refer to the LegCo Brief (File ref: EP CR 9/15/20) issued by EPD and the Agriculture, Fisheries and Conservation Department on 23 February 2018 for further information.

25. As advised by the Clerk to the EA Panel, the Panel was consulted on the Administration's proposal to phase out the local trade in ivory and impose heavier penalties on smuggling and illegal trading of endangered species at the meetings on 22 February and 27 June 2016, and 27 March 2017. The Panel further received public views on the Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 ("2017 Bill") at the meeting on 6 June 2017. A Bills Committee was formed to study the 2017 Bill. The Bills Committee generally supported the policy intent to enhance protection of elephants. Matters discussed by the Bills Committee included the impact of the ivory ban on the trade, scope of exemptions, grace period for imposing the ivory ban, levels of the proposed penalties and enforcement against the smuggling and sale of illegal ivory. Members may refer to the report of the Bills Committee (LC Paper No. CB(1)508/17-18) for further information.

## **PART IV SECURITIES AND FUTURES**

**Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) (Amendment) Notice 2018 (L.N. 34)**

**Securities and Futures (OTC Derivative Products) Notice (L.N. 35)**

26. L.N. 34 and L.N. 35 are made by the Financial Secretary under sections 392A and 392 of the Securities and Futures Ordinance (Cap. 571) respectively to adjust the scope of over-the-counter ("OTC") derivative products. Under Cap. 571, transactions of OTC derivative products are subject to certain mandatory reporting, clearing and trading requirements.

#### L.N. 34

27. Under section 1B(2)(c) of Part 1 of Schedule 1 to Cap. 571, an OTC derivative product does not include a securities or futures contract that is (a) traded on a stock market or futures market prescribed under section 392A of Cap. 571; and (b) cleared through a clearing house prescribed under that section. The existing lists of prescribed stock markets, futures markets and clearing houses are provided in the Schedule to the Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice (Cap. 571AM).

28. L.N. 34 amends the Schedule to Cap. 571AM to prescribe additional stock or futures markets<sup>8</sup> and clearing houses<sup>9</sup> for the purposes of section 1B(2)(c) of Part 1 of Schedule 1 to Cap. 571 so that products traded on those markets and cleared through those clearing houses are excluded from the scope of OTC derivative products. L.N. 34 also amends the English name of a market operator and clearing house (i.e. "GreTai Securities Market" is changed to "Taipei Exchange").

#### L.N. 35

29. L.N. 35 prescribes that any structured product that meets the following criteria (i.e. "Delta One Warrant") is not to be regarded as an OTC derivative product:

- (a) the structured product gives its holder the right to purchase its underlying subject matter (e.g. securities, commodity, interest rate and credit event);
- (b) it is either settled in cash or physically settled;
- (c) if it is settled in a currency other than the currency or currencies in which the underlying subject matter is denominated - it is settled at the exchange rate for the currencies involved prevailing at the time of the settlement;
- (d) it has its strike price set at zero or an amount close to zero;

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<sup>8</sup> The newly added prescribed stock/futures markets include Main Securities Market operated by The Irish Stock Exchange plc; and markets operated by six additional market operators, namely, Hanoi Stock Exchange, Hochiminh Stock Exchange, Miami International Securities Exchange, LLC, Pakistan Stock Exchange, Shanghai International Energy Exchange Co., LTD and Taiwan Stock Exchange Corporation.

<sup>9</sup> The newly added clearing houses are: Clearstream Banking S.A., Euroclear Bank S.A./N.V., National Clearing Company of Pakistan Limited, Shanghai International Energy Exchange Co., LTD, Taiwan Stock Exchange Corporation and Vietnam Securities Depository.



- (e) it is not subject to any restriction on its transfer (other than a restriction imposed solely for the purpose of complying with applicable legal or regulatory requirements); and
- (f) it is documented in the form of a warrant.

30. According to the LegCo Brief (with no file reference) issued by the Financial Services and the Treasury Bureau, Hong Kong Monetary Authority ("HKMA") and Securities and Futures Commission ("SFC") on 21 February 2018, the adjustments under L.N. 34 and L.N. 35 are made in response to requests from the market participants to carve out from the definition of OTC derivative product under Cap. 571 certain products which were traded on and cleared through adequately regulated exchanges and clearing houses; and Delta One Warrants which do not embody common features of OTC derivative products. HKMA and SFC conducted a joint public consultation on the adjustments in April 2017. Respondents generally supported the adjustments and some provided comments on the criteria for defining Delta One Warrants, which were taken into account by HKMA and SFC in finalising the adjustments (paragraphs 3 and 16).

31. According to the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on the two Notices. The Government has provided an information paper on two proposed amendments to the scope of the term "OTC derivative product" under the OTC regulatory regime in Cap. 571 which was circulated to Panel members vide LC Paper No. CB(1)346/17-18(01) on 13 December 2017.

32. L.N. 34 and L.N. 35 come into operation on 27 April 2018.

### **Concluding observations**

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

Prepared by

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15 March 2018