

立法會
Legislative Council

LC Paper No. LS54/17-18

**Paper for the House Committee Meeting
on 4 May 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 April 2018**

Tabling in LegCo : Council meeting of 2 May 2018

Amendment to be made by : Council meeting of 30 May 2018 (or that of 20 June 2018 if extended by resolution)

Medical Council (Election and Appointment of Lay Members) Regulation (L.N. 67)

The Medical Registration (Amendment) Bill 2017 ("the MRA Bill") was passed by the Legislative Council ("LegCo") on 28 March 2018 and the enacted Ordinance was published in the Gazette as Ord. No. 15 of 2018 on 6 April 2018. Ord. No. 15 of 2018 amends the Medical Registration Ordinance (Cap. 161) and three items of its subsidiary legislation to, among other things, change the composition of the Medical Council of Hong Kong ("the Medical Council"). Such changes include the addition of three lay members to the Medical Council elected by patient organizations ("Lay Members") under a regulation to be made by the Permanent Secretary for Food and Health (Health) ("the Permanent Secretary") under section 33(3A) of Cap. 161.

2. L.N. 67 is made by the Permanent Secretary under section 33(3A) of Cap. 161 to provide for the procedure and other matters relating to the election and appointment of the Lay Members. The major provisions are summarized below:

- (a) Parts 2 and 11 provide for the procedure and eligibility requirements for registration as an elector for the election of the Lay Members;

- (b) Parts 3 and 4 and the Schedule provide for the requirement to issue a notice of election for the election, and the procedure and eligibility requirements for nominating candidates for the election;
- (c) Parts 5 to 7 provide for the requirements in relation to the issue of a notice of result of nominations of candidates, the conducting of a poll and further rounds of the election, and the determination and declaration of the election result;
- (d) Parts 8 and 9 and the Schedule provide for the obligations of the Secretary of the Medical Council to keep and dispose of the election documents, and the rules on the questioning of the election result by an election petition to the Medical Council; and
- (e) Part 10 provides for the procedure in relation to the nomination and appointment of a person to fill a vacancy of an office of a Lay Member where the unexpired term of the office is less than one year when the vacancy arises.

3. According to paragraph 11 of the LegCo Brief (File Ref.: FH CR 1/F/3261/92 Pt. 31) issued by the Food and Health Bureau in April 2018, the Administration has consulted representatives of key patient groups on the framework and detailed arrangements of L.N. 67 and they are supportive of the proposed arrangements.

4. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 67. As advised by the Clerk to the Bills Committee formed to study the MRA Bill, the Administration, in the course of scrutinizing the MRA Bill, briefed the Bills Committee on the framework of L.N. 67. Members generally supported the regulatory framework but raised concerns on certain issues, including the eligibility requirements for being an elector and the arrangements for filling a vacancy of a Lay Member if the unexpired term of the office is less than one year.

5. L.N. 67 comes into operation on a day to be appointed by the Permanent Secretary by notice published in the Gazette.

**Dutiable Commodities (Amendment) Ordinance 2018
(Commencement) Notice**

(L.N. 68)

6. L.N. 68 is made by the Secretary for Food and Health under section 1(2) of the Dutiable Commodities (Amendment) Ordinance 2018 (Ord. No. 10 of 2018) to appoint 30 November 2018 as the day on which Ord. No. 10 of 2018 comes into operation.

7. The Dutiable Commodities (Amendment) Bill 2017 ("DCA Bill") was passed by LegCo on 8 February 2018 and the enacted Ordinance was published in the Gazette as Ord. No. 10 of 2018 on 15 February 2018. Ord. No. 10 of 2018 amends the Dutiable Commodities Ordinance (Cap. 109) and the Dutiable Commodities (Liquor) Regulations (Cap. 109B) to prohibit the sale of intoxicating liquor from vending machines, to prohibit the sale or supply of intoxicating liquor to minors in the course of business, and to impose requirements for a prescribed notice and age declaration for the sale or supply of intoxicating liquor.

8. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 68. As advised by the Clerk to the Bills Committee formed to study the DCA Bill, while the commencement of Ord. No. 10 of 2018 had not been explicitly discussed at the relevant Bills Committee meetings, the Administration had advised that a six-month adaptation period would be provided so that the trade would have sufficient time to prepare for the new regulatory regime established under Ord. No. 10 of 2018.¹

**Inland Revenue Ordinance (Amendment of Schedule 16)
Notice 2018**

(L.N. 69)

9. Section 20AC of the Inland Revenue Ordinance (Cap. 112) provides, among other things, that if certain conditions are satisfied, a non-resident person is exempt from profits tax chargeable in respect of the person's assessable profits from any transaction specified in Part 1 of Schedule 16 to Cap. 112 ("main transaction") and any transaction incidental to the carrying out of a main transaction. The transactions specified in Schedule 16 include transactions in securities and futures contracts.

¹ Please refer to paragraph 29 of the Report of the Bills Committee on the Dutiable Commodities (Amendment) Bill 2017 (LC Paper No. CB(2) 807/17-18).

10. L.N. 69 is made by the Commissioner of Inland Revenue under section 20AC(5) of Cap. 112 to add to Schedule 16 a type of transaction (i.e. a transaction in an investee company's shares carried out through or arranged by a specified person for, or carried out by, a non-resident partner fund) and provide for related definitions and provisions (including "investee company" and "non-resident partner fund"). An investee company is defined to include a corporation that has The Innovation and Technology Venture Fund ("ITVF") Corporation incorporated under the Companies Ordinance (Cap. 622) and a partner fund as shareholders under the ITVF Scheme². The effect of L.N. 69 is that the above type of transaction is exempt from profits tax if certain conditions are satisfied.

11. According to paragraphs 4 to 6 of the LegCo Brief (File Ref: ITC CR5/1/2168/18) issued by the Innovation and Technology Bureau and the Innovation and Technology Commission on 25 April 2018, some offshore Venture Capital ("VC") funds have expressed concern that they may lose the tax exemption status under Cap. 112 if they co-invest with the Government under the ITVF Scheme and the profit arising from such investment in and outside Hong Kong may become taxable profits under Cap. 112. According to the Administration, L.N. 69 is made to address such concern. Members may refer to the LegCo Brief for further details.

12. According to paragraph 13 of the LegCo Brief, the Administration has consulted major VC associations and professional bodies in accountancy and/or tax in 2017 and they generally welcome the amendments.

13. As advised by the Clerk to the Panel on Commerce and Industry, the Panel was briefed at its meeting on 16 January 2018 by the Administration on the above legislative amendment so that offshore VC funds co-investing with the Government under the ITVF Scheme would be able to maintain their profits tax exemption status. Members supported the amendment in principle.

14. L.N. 69 comes into operation on 22 June 2018.

² According to paragraphs 2 and 3 of the LegCo Brief, the ITVF Scheme is established by the Innovation and Technology Commission to co-invest with Venture Capital funds in local innovation and technology start-ups. The Government has openly invited such funds to become partner funds of the ITVF Scheme. Members may refer to the LegCo Brief for further details.

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2018

(L.N. 70)

15. L.N. 70 is made by the Director of Health under section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371) to amend the Schedule to the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D) by:

- (a) adding five new public transport facilities ("PTFs")³ to the Schedule to Cap. 371D with the effect that such facilities are designated as no smoking areas ("NSAs") in PTFs under Cap. 371;
- (b) updating the details of eight existing PTFs specified in the Schedule to Cap. 371D; and
- (c) removing two PTFs from the Schedule to Cap. 371D with the effect that these areas ceased to be designated NSAs in PTFs under Cap. 371.

16. According to paragraph 5 of the LegCo Brief (File Ref: FH CR 7/52/581/89) issued by the Food and Health Bureau and Department of Health on 25 April 2018, the five new PTFs are added because they meet the criteria specified in section 3(1AB) of Cap. 371. Further, the details of eight PTFs already listed in the Schedule are updated by L.N. 70 owing to changes in their location, physical features and settings. In addition, two PTFs are removed from the Schedule because they no longer meet the criteria owing to changes in transport arrangement.

17. Under section 7(1) of Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in a designated NSA commits an offence and is liable on summary conviction to a fine of \$5,000. Smoking in an NSA is also a scheduled offence in respect of which a public officer may give the offender a notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) offering him an opportunity to discharge his liability to conviction for the offence by payment of a fixed penalty (currently fixed at \$1,500) within 21 days from the date of the notice.

³ These facilities are Kennedy Town Station Public Transport Interchange, Siu Sai Wan Estate Bus Terminus, Kom Tsun Street (North) Temporary Bus Terminus, Fo Tan Station Public Transport Interchange and Nai Chung Public Transport Interchange.

18. According to paragraph 12 of the LegCo Brief, the Administration has issued an information note on the details of the amendments to 18 District Councils. Further, all plans of the NSAs of PTFs have been deposited in the Land Registry for inspection by the public. They will also be posted on the Tobacco Control Office's website before L.N. 70 comes into operation.

19. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 70.

20. L.N. 70 comes into operation on 31 July 2018.

Trade Descriptions Ordinance (Amendment of Schedule 1)

Notice 2018

(L.N. 71)

21. Under section 2A(3) of the Trade Descriptions Ordinance (Cap. 362), the rules of origin for goods qualified for preferential tariff treatment under a trade arrangement specified in Schedule 1 to Cap. 362 apply for the purpose of determining the place of manufacture or production of those goods.

22. L.N. 71 is made by the Secretary for Commerce and Economic Development under section 2A(4) of Cap. 362 to add the Free Trade Agreement between Hong Kong and the Association of Southeast Asian Nations signed on 28 March 2018 ("ASEAN Agreement") to Schedule 1 to Cap. 362. The effect of L.N. 71 is to make section 2A(3) of Cap. 362 apply to the ASEAN Agreement.

23. According to paragraph 4 of the LegCo Brief (File Ref: TRA CR 1327/1/14) issued by the Commerce and Economic Development Bureau and the Trade and Industry Department in April 2018, under the ASEAN Agreement, a set of preferential rules of origin has been formulated under which preferential tariff treatment is accorded to goods of Hong Kong origin. According to the Administration, L.N. 71 is made to enable Hong Kong traders to apply the preferential rules of origin specified in the ASEAN Agreement.

24. As advised by the Clerk to the Panel on Commerce and Industry, the Panel noted at its meeting on 19 December 2017 the preferential tariff treatment accorded to goods of Hong Kong origin under the ASEAN Agreement. The Panel raised no objection to the proposal to enable Hong

Kong traders to apply the rules of origin specified under the ASEAN Agreement. Some members noted the different paces of reduction of customs duties offered by various ASEAN Member States ("AMS") under the ASEAN Agreement, and were keen to ensure that the Administration would strive for earlier reduction or elimination of customs duties with AMS having a slower pace of reduction.

25. L.N. 71 comes into operation on 1 July 2018.

Concluding Observations

26. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 68, L.N. 70 and L.N. 71. The Legal Service Division is scrutinizing L.N. 67 and L.N. 69. Further reports will be made, if necessary.

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