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**Legislative Council**

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**Paper for the House Committee Meeting  
on 25 May 2018**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 18 May 2018**

**Tabling in LegCo** : Council meeting of 23 May 2018

**Amendment to be made by** : Council meeting of 20 June 2018 (or that of 11 July 2018 if extended by resolution)

**PART I SCHEDULE OF BUS ROUTES**

**Schedule of Routes (Citybus Limited) Order 2018** (L.N. 83)

**Schedule of Routes (Citybus Limited) (North Lantau and Hong Kong International Airport) Order 2018** (L.N. 84)

**Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2018** (L.N. 85)

**Schedule of Routes (Long Win Bus Company Limited) Order 2018** (L.N. 86)

**Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2018** (L.N. 87)

**Schedule of Routes (New World First Bus Services Limited) Order 2018** (L.N. 88)

L.N. 83 to L.N. 88 are made by the Chief Executive ("CE") in Council under section 5(1) of the Public Bus Services Ordinance (Cap. 230) to update the schedules of bus routes operated by five franchised bus companies.

2. Under section 5(1) of Cap. 230, CE in Council may grant to the existing franchised public bus companies the right to operate bus service on such routes as specified by order. Section 15 of Cap. 230 provides that the Commissioner of Transport may, after consultation with the bus companies, require them to introduce new routes and make alterations to specified routes on

a temporary basis. Such route changes may take effect for a period up to 24 months unless they are specified in orders by CE in Council under section 5(1) before expiry of that period. According to paragraph 2 of the Legislative Council ("LegCo") Brief (File Ref: THB(T)L 2/4/115) issued by the Transport and Housing Bureau on 16 May 2018, L.N. 83 to L.N. 88 were made to formalise the route changes introduced under section 15 of Cap. 230 between 1 August 2016 and 31 December 2017 so that the changes can continue to take effect.

3. L.N. 83 to L.N. 88 respectively repeal the existing Schedule of Routes Orders made in 2017 (i.e. L.N. 1 of 2017 to L.N. 6 of 2017) and update the schedule of bus routes of five franchised bus companies. According to paragraph 4 of the LegCo Brief, the changes are as follows:

- (a) Kowloon Motor Bus Company (1933) Limited introduced 24 new routes, cancelled two routes and made alteration to 105 routes;
- (b) Citybus Limited (which operates two bus franchises) introduced two new routes and made alterations to 18 routes under the franchise for Hong Kong Island and the cross-harbour bus network. It introduced two new routes and made alterations to eight routes under the franchise for Airport and North Lantau bus network;
- (c) New World First Bus Services Limited introduced eight new routes, cancelled two routes and made alterations to 17 routes;
- (d) Long Win Bus Company Limited introduced seven new routes, cancelled one route and made alterations to nine routes; and
- (e) New Lantao Bus Company (1973) Limited made alterations to one route.

4. For details of the routes concerned under the above changes and the justifications, Members may refer to Annexes A to E of the LegCo Brief.

5. According to paragraph 7 of the LegCo Brief, the District Councils ("DCs") concerned had been consulted on the major service changes before such changes were introduced. Comments and suggestions in relation to those changes were received from DC members. According to the Administration, DCs' suggestions had been taken on board where justified.

6. As advised by the Clerk to the Panel on Transport, the Panel has not been consulted on L.N. 83 to L.N. 88 of 2018, or the contents therein.

7. L.N. 83 to L.N. 88 come into operation on 31 July 2018.

**PART II SUBSIDIARY LEGISLATION MADE UNDER THE  
MERCHANT SHIPPING (PREVENTION AND CONTROL OF  
POLLUTION) ORDINANCE (CAP. 413)**

**Merchant Shipping (Prevention and Control of Pollution)  
(Fees) (Amendment) Regulation 2018 (L.N. 90)**

**Merchant Shipping (Control of Ballast Water and  
Sediments) Regulation (L.N. 91)**

**Merchant Shipping (Control of Pollution by Noxious Liquid  
Substances in Bulk) (Amendment) Regulation 2018 (L.N. 92)**

**Merchant Shipping (BCH Code) (Amendment)  
Regulation 2018 (L.N. 93)**

**Merchant Shipping (IBC Code) (Amendment)  
Regulation 2018 (L.N. 94)**

8. L.N. 91 to L.N. 94 are made by the Secretary for Transport and Housing ("STH") under sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) to implement the latest requirements of the International Convention for the Control and Management of Ships' Ballast Water and Sediments ("Ballast Water Management Convention")<sup>1</sup> and the International Convention for the Prevention of Pollution from Ships ("MARPOL") Annex II<sup>2</sup> respectively. Hong Kong has not yet implemented the requirements of the Ballast Water Management Convention. On the other hand, the requirements of MARPOL

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<sup>1</sup> The Ballast Water Management Convention, adopted by the International Maritime Organization ("IMO") in 2004, regulates the discharge of ballast water of ships by establishing standards and procedures for the management and control of ships' ballast water and sediments to prevent the spread of harmful aquatic organisms from one region to another.

<sup>2</sup> MARPOL (which has six annexes regulating the discharge of different pollutants), adopted by IMO in 1973, is to protect the marine environment and minimise pollution from ship operation. MARPOL Annex II (which has adopted the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk and the International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk) regulates ships carrying noxious liquid substances in bulk, covering specific requirements on design and construction of ships, ship certification, the record of cargo operations and the control of operational discharges.

Annex II are implemented in Hong Kong through Cap. 413 and its subsidiary legislation.

### L.N. 91

9. L.N. 91 is a new regulation made to implement the requirements of the Ballast Water Management Convention (which came into force in September 2017) in Hong Kong. It provides for:

- (a) the regulation of ballast water and sediments and the standards that are required to be met (including implementing a Ballast Water Management Plan and maintaining a Ballast Water Record Book) when ships conduct ballast water management, ballast water exchange and sediments management;
- (b) the issue, duration, cessation and cancellation of the International Ballast Water Management Certificate ("IBWM Certificate") for ships of 400 gross tonnage or above;
- (c) surveys that are required to be carried out in respect of a ship and the duties of the owner and the master of a ship;
- (d) the powers of Government surveyors and powers of the Director of Marine ("MD"); and
- (e) offences against the owner and/or master of a ship for the contravention of the requirements under L.N. 91.

10. L.N. 91 applies to a Hong Kong ship (wherever it may be) and a non-Hong Kong ship within the waters of Hong Kong which are engaged in international voyages. It does not apply to (a) a ship that is not designed or built to carry ballast water, (b) a ship that carries ballast water in sealed tanks such that the ballast water is not subject to discharge, (c) a warship, (d) a naval auxiliary, or (e) any other ship owned or operated by a government and used only on government non-commercial service.

11. L.N. 91 comes into operation on a day to be appointed by STH by notice published in the Gazette.

### LN. 92 to L.N. 94

12. L.N. 92 to 94 implement the latest requirements of MARPOL Annex II, the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk ("BCH Code") and the the International Code for the

Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk ("IBC Code") respectively. In gist,

- (a) L.N. 92 amends the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413B) to give effect to the latest requirements of MARPOL Annex II. The major amendments include the reclassification of noxious liquid substances ("NLS") products into Categories X, Y, Z and Other Substances which have different loading, carriage and discharge restrictions, and updating other requirements as to tightening the maximum permitted residue of NLS in the tank. It also provides for the power of MD to recognize organizations to perform certain functions relating to surveys and issue of certificates, and the general power of Government surveyors to inspect or examine ships within the waters of Hong Kong etc.
- (b) L.N. 93 and L.N. 94 amend the Merchant Shipping (BCH Code) Regulations (Cap. 413D) and the Merchant Shipping (IBC Code) Regulations (Cap. 413E) respectively to require chemical tankers to be fitted with an approved stability instrument capable of verifying compliance with the applicable stability requirements of the ship both in intact and damaged states, and to update requirements relating to surveys so as to bring them in line with the latest requirements of the BCH Code and the IBC Code. They also provide for the powers of MD and Government surveyors to perform certain functions similar to those as provided in L.N. 92.

13. L.N. 92 to L.N. 94 come into operation on 17 July 2018.

#### L.N. 90

14. L.N. 90 is made by the CE in Council under section 3(2A) of Cap. 413 to amend the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation (Cap. 413L) to provide for the fees chargeable for the survey service carried out by a Government surveyor and the issue of IBWM Certificates by MD under L.N. 91, and the fees for other similar survey and certification services carried out under the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A), Cap. 413B, Cap. 413D and Cap. 413E.

15. Save for sections 3(3), (4) and (5), 4(2) and 5(2) of L.N. 90 (which relate to the fees chargeable in relation to the survey and certification services carried out under L.N. 91) which would come into operation on the day on which L.N. 91 comes into operation, L.N. 90 comes into operation on 17 July 2018, i.e. the day on which L.N. 92 to L.N. 94 come into operation.

16. It is noted that the Administration has, pursuant to section 3A of Cap. 413, adopted the direct reference approach in L.N. 91 to L.N. 94 by referring directly to the Ballast Water Management Convention, MARPOL Annex II, the BCH Code and the IBC Code, as revised or amended from time to time. According to the two LegCo Briefs (File Ref: THB(T) CR 8/10/90/15 and File Ref: THB(T) CR 8/10/90/2) ("LegCo Briefs") issued by the Transport and Housing Bureau on L.N. 90 to L.N. 94 in May 2018, this approach can keep the local legislation up-to-date as far as practicable.

### Consultation

17. According to the LegCo Briefs, the Administration had consulted the Shipping Consultative Committee of the Marine Department for the proposals in L.N. 90 and L.N. 91 and also consulted the Shipping Consultative Committee and the Local Vessels Advisory Committee of the Marine Department for the proposals in L.N. 92 to L.N. 94, and they supported the proposals.

18. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 22 January 2018 and 26 June 2017 respectively on the proposed legislative amendments. Members were generally supportive of the proposals. Regarding the implementation of the latest requirements of the Ballast Water Management Convention, members enquired about the control and management of ballast water of ships within Hong Kong waters and the Administration's response was issued to members vide LC Paper No. CB(4)653/17-18(01). Concerning the latest requirements of MARPOL, members noted from the Administration that all Hong Kong-registered vessels concerned had complied with the latest requirements. The Panel was not consulted specifically on the fees chargeable for providing the survey and certification services in connection with the implementation of new requirements.

## **PART III SUBSIDIARY LEGISLATION RELATING TO OPEN-ENDED FUND COMPANIES AND PROFESSIONAL INVESTORS**

**Securities and Futures (Amendment) Ordinance 2016  
(Commencement) Notice** (L.N. 96)

**Securities and Futures (Open-ended Fund Companies)  
Rules** (L.N. 97)

**Securities and Futures (Open-ended Fund Companies)  
(Fees) Regulation** (L.N. 98)

## L.N. 96

19. L.N. 96 is made by the Secretary for Financial Services and the Treasury ("SFST") to appoint 30 July 2018 as the day on which the Securities and Futures (Amendment) Ordinance 2016 ("SFAO") comes into operation.

20. SFAO was enacted by LegCo in June 2016 to amend the Securities and Futures Ordinance (Cap. 571) to allow an investment fund to be set up as an open-ended fund company ("OFC") with the flexibility to create and redeem shares for investors to trade funds, which conventional companies could not do. OFC also allows distribution out of capital subject to the relevant solvency and disclosure requirements. Previously, an open-ended investment fund was only allowed to be established in the form of a unit trust but not in corporate form due to restrictions under the Companies Ordinance (Cap. 622). A Bills Committee had been formed to study the relevant Bill before its enactment as SFAO. Members may refer to the Bills Committee's report dated 17 May 2016 (LC Paper No. CB(1)896/15-16) for further details.

21. According to paragraph 2 of the LegCo Brief (File Ref: ASST/3/1/6C) issued by the Financial Services and the Treasury Bureau, the Securities and Futures Commission ("SFC"), the Companies Registry and the Official Receiver's Office on 15 May 2018, the introduction of OFC as a new form of investment fund vehicle will enhance Hong Kong's attractiveness as a location for the domiciliation and origination of funds, and be conducive to the development of our asset management industry. According to the Administration, SFAO has not been brought into operation pending the making of the subsidiary legislation on the operational details for OFCs.

## L.N. 97 and L.N. 98

22. L.N. 97 and L.N. 98 are subsidiary legislation providing for the operational details for OFCs.

23. L.N. 97 is made by SFC under sections 112ZK, 112ZL and 112ZM of Cap. 571 (as amended by SFAO) with the consent of the Registrar of Companies ("RC") and the Official Receiver ("OR") to provide for the carrying on of collective investments by means of OFCs, their regulation, and the functions of RC and OR in relation to OFCs. Salient provisions include:

- (a) Part 2 deals with the formation of an OFC (which may only be formed for a lawful purpose) and related matters including requirements for application for registration, change of name, capacity and powers, the directors' power to bind an OFC vis-à-vis persons dealing with the OFC in good faith, instrument of

incorporation (which must state the object of operating the OFC as a collective investment scheme ("CIS")), disclosure of an OFC's details in communications or on its website, and registered office;

- (b) Part 3 sets out RC's powers and functions in relation to specifying forms, the issuance of guidelines (which are not subsidiary legislation), the OFC register, registration of OFC-related documents by RC, immunity for persons authorized by RC to supply information electronically, enquiry into false statements, protection of disclosures from liability for breach of confidence, and protection of informers and others assisting in an enquiry;
- (c) Parts 4 and 5 provide for, among others, the transfer of shares of an OFC, the rights attached to shares, compensation for forged share transfers, cancellation of redeemed shares, register of shareholders, rectification of the register by the Court of First Instance ("CFI"), meetings and resolutions of an OFC, and an OFC's duty to keep records of resolutions and meetings;
- (d) Part 6 governs the appointment and respective rights of directors, custodians, investment managers and auditors of OFCs. For example:
  - (i) the experience and expertise of an OFC's directors must be appropriate for carrying on the OFC's business; an OFC must notify RC of the appointment, cessation of appointment and change in particulars of directors, and record minutes of directors' meetings and resolutions;
  - (ii) a non-Hong Kong custodian must have a process agent; a sub-custodian must safeguard an OFC's scheme property with reasonable care, skill and diligence; a custodian ceasing office must give a statement of circumstances of the cessation, which is protected by qualified privilege from defamation liability;
  - (iii) an investment manager is entitled to attend any general meeting of the OFC and to be heard on any part of the business of the meeting that concerns the investment manager;
  - (iv) auditors have qualified privilege from liability for defamation for statements made or published in performing their duties; if a resigning auditor gives a statement of the circumstances of the resignation, the OFC must send that statement to the shareholders, subject to CFI's power to direct otherwise;



- (e) Parts 7 to 9 deal with, *inter alia*, an OFC's financial statements and reports, SFC's approval of the establishment, termination and change of name of sub-funds<sup>3</sup>, implied terms of transactions or contracts entered into with sub-funds, and CFI's powers on schemes of arrangement, compromise, reconstruction or amalgamation;
- (f) Parts 10 and 11 provide for the appointment of receivers and managers for, and voluntary winding up and dissolution of, an OFC in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), subject to requisite modifications;
- (g) Part 12 deals with the cancellation of an OFC's registration, the offence of making a misleading, false or deceptive statement in any return, report, financial statement, certificate etc. (punishable by a maximum penalty of \$300,000 and two years' imprisonment), and CFI's power to make an order directing an OFC or its officer to make good a contravention.

24. L.N. 98 is made by SFST<sup>4</sup> under section 112ZQ of Cap. 571 (as amended by SFAO) to provide for fees payable to SFC and RC in relation to OFCs.

25. Schedule 1 specifies the fees payable to SFC for applications for, among others, registration of a company to be incorporated as an OFC (\$5,000 to \$10,000), approval to change an OFC's or a sub-fund's name (\$300), approval to appoint a director, custodian or investment manager (\$300), approval to establish a sub-fund (\$1,250), and cancellation of an OFC's registration (\$300). Section 6 empowers SFC to waive, in whole or in part, any fee if SFC opines that the payment of any such fee would be inappropriate or unduly burdensome.

26. Schedule 2 specifies the fees payable to RC for inspecting or obtaining documents or information contained in the OFC register (\$9 to \$35)<sup>5</sup>, and the annual fees for registering an account with RC for those purposes (\$500 for a registered user's first account and \$100 for each subsequent account).

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<sup>3</sup> Under section 112R of Cap. 571 (as amended by SFAO), an OFC may divide its scheme property into separate parts, each of which is a sub-fund of the OFC.

<sup>4</sup> Under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "Financial Secretary" includes SFST who may make the regulation under section 112ZQ of Cap. 571.

<sup>5</sup> Part 2 of Schedule 2 prescribes different fees for on-site users (O), registered online users (R) and unregistered online users (U) for inspecting or obtaining documents or information.

27. Schedule 3 sets out the fees payable to RC for, *inter alia*, lodging an incorporation form and a copy of the instrument of incorporation (\$479), incorporating an OFC (\$2,555), lodging a notice of change of name (\$160), and issuing a certificate of change of name (\$1,245).

28. According to paragraph 20 of the LegCo Brief, the fees payable to OR for the winding-up of OFCs are the same as the existing fees for other unregistered companies under Cap. 32, and no new fees are introduced for the winding-up of OFCs under the voluntary winding-up regime in L.N. 97.

29. Paragraph 28 of the LegCo Brief states that SFC consulted the public on the legislative proposals from June to August 2017. According to the Administration, respondents generally supported the proposed requirements.

30. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 96, but was briefed on L.N. 97 and L.N. 98 on 5 June 2017. Members did not object to the proposals and enquired about, among others, the Administration's measures to prevent abuse of tax exemption granted to OFCs, details on the segregated liability feature of sub-funds of umbrella OFCs, and future development of OFC as an investment fund vehicle.

31. L.N. 97 and L.N. 98 come into operation on the day on which SFAO comes into operation, i.e. 30 July 2018.

## **Securities and Futures (Professional Investor) (Amendment) Rules 2018**

**(L.N. 99)**

### Background

32. Section 1 of Part 1 of Schedule 1 to Cap. 571 defines "professional investor" ("PI") to include any authorized financial institution, insurer, CIS, registered provident fund or retirement scheme, and any person of a class prescribed by rules under section 397 of Cap. 571 as within the meaning of PI. Section 3 of the Securities and Futures (Professional Investor) Rules (Cap. 571D) prescribes the following persons as PI under Cap. 571:

- (a) any trust corporation with total assets of not less than \$40 million;
- (b) any individual, either alone or jointly with his or her spouse or children, having a portfolio of not less than \$8 million;
- (c) any corporation or partnership having a portfolio of not less than \$8 million or total assets of not less than \$40 million; and

- (d) any corporation whose *sole* business is to hold investments and which is wholly owned by (a), (b) and/or (c) above.

33. According to paragraph 2 of the LegCo Brief (no reference) issued by SFC on 16 May 2018, under the PI regime, certain requirements of Cap. 571 imposed on intermediaries may be dis-applied vis-à-vis PIs who are generally regarded as more sophisticated and more capable of protecting their interests.

#### L.N. 99

34. L.N. 99 is made by SFC under section 397(1) of Cap. 571 to amend Cap. 571D to expand the types of individuals and corporations that are to be regarded as PIs and the records which may be considered in ascertaining whether a person is a PI. The main provisions are summarized as follows:

- (a) in determining whether an individual qualifies as a PI, an individual's share<sup>6</sup> of a portfolio jointly held with persons other than the individual's spouse or children, and the portfolio of an investment holding corporation wholly owned by the individual, may also be taken into account in calculating the individual's portfolio (new section 5 of Cap. 571D);
- (b) a corporation qualifies as a PI if investment holding is its *principal* (rather than sole) business and it is wholly owned by any one or more PI within the meaning of section 1 of Part 1 of Schedule 1 to Cap. 571 or Cap. 571D (new section 6(b) of Cap. 571D); and
- (c) in ascertaining the size of the portfolio or total assets of an individual, corporation or partnership, one may refer to a public filing<sup>7</sup> submitted by them or on their behalf, in addition to other forms of acceptable evidence<sup>8</sup> (new section 8 of Cap. 571D).

35. According to paragraph 19 of the LegCo Brief, SFC consulted the public from 1 March to 3 April 2017. SFC considered the proposed amendments to Cap. 571D appropriate, having examined all comments and suggestions.

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<sup>6</sup> An individual's share of a portfolio on a joint account with persons other than his or her spouse or children is the individual's share as specified in a written agreement among the account holders or, in the absence of such agreement, an equal share of the portfolio.

<sup>7</sup> Under section 3 of L.N. 99, "public filing" means a document submitted under the legal or regulatory requirements in Hong Kong or elsewhere to a person or body who has a duty to publish the document to, or make it available for inspection by, members of the public.

<sup>8</sup> Audited financial statements, custodian statements, and an auditor/accountant's certificates.

36. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed on the proposed amendments at its meeting on 15 May 2018. Members were generally supportive of the proposals and raised enquiries about actions that intermediaries should take in ascertaining an individual's share in the portfolio held in a joint account and the principal business of a corporation owned by the individual in determining whether the individual qualified as a PI. Members also called on the Administration to strengthen investor education to enhance investors' understanding of the rights and obligations of PIs.

37. L.N. 99 comes into operation on 13 July 2018.

#### **PART IV SUBSIDIARY LEGISLATION MADE UNDER THE BANKING ORDINANCE**

**Banking (Exposure Limits) Rules (L.N. 101)**

**Banking (Amendment) Ordinance 2018 (Commencement) Notice 2018 (L.N. 102)**

#### Background

38. The Banking (Amendment) Bill 2017 was passed by LegCo on 24 January 2018 and the enacted Ordinance was published in the Gazette as Ord. No. 6 of 2018 on 2 February 2018. Ord. No. 6 of 2018 amends the Banking Ordinance (Cap. 155) to provide for recovery planning by authorized institutions ("AIs")<sup>9</sup>, to change the limitations on AIs' exposures and to empower the Monetary Authority ("MA") to make rules of such limitations, and to repeal two items of subsidiary legislation made under Cap. 155.<sup>10</sup> Part 1 of Ord. No. 6 of 2018, sections 2, 3(3), 3(5), 4 and 19(1) of Ord. No. 6 of 2018 and Division 1 of Part 4 of Ord. No. 6 of 2018 came into operation on 2 February 2018, i.e. the day on which Ord. No. 6 of 2018 was published in the Gazette.<sup>11</sup> The other provisions have not been brought into operation, pending the making of the relevant subsidiary legislation. Prior to the enactment of Ord. No. 6 of 2018, a Bills Committee was formed to study the Banking (Amendment) Bill 2017. According to the Report of the Bills Committee (LC

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<sup>9</sup> Section 2 of Cap. 155 defines "authorized institution" as a bank, a restricted-licence bank or a deposit taking company.

<sup>10</sup> These two items are the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155O) and the Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007 (Cap. 155P).

<sup>11</sup> See section 1(3) of Ord. No. 6 of 2018. These provisions mainly provide for the commencement of Ord. No. 6 of 2018, certain definitions and recovery planning under Cap.155, application to the Banking Review Tribunal under Cap. 155 and the repeal of the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155O).

Paper No. CB(4)499/17-18) dated 17 January 2018, Ord. No. 6 of 2018, among other things, implements the new large exposures framework promulgated by the Basel Committee on Banking Supervision ("BCBS") in April 2014.

### L.N. 101

39. Section 9 of Ord. No. 6 of 2018 adds section 81A to Cap. 155. In gist, section 81A provides, among other things, for MA's power to make rules prescribing limits on the exposures incurred by an AI after consulting the Financial Secretary and the persons specified in section 81A(2), i.e. 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 ("statutory consultees").

40. L.N. 101 is made by MA under section 81A of Cap. 155 after consultation with the Financial Secretary and the statutory consultees. Key features of L.N. 101 include:

- (a) widening the scope of equity exposures from direct holding of shares to equity exposures generally (including exposures arising from equity derivatives contracts);<sup>12</sup>
- (b) prescribing the equity exposure ratio<sup>13</sup> (which is set at not exceeding 25%)<sup>14</sup> for AIs and providing for MA's power to vary the limit;
- (c) providing for the calculation of the equity exposure ratio and the details of valuation of different types of equity exposures;<sup>15</sup> and
- (d) providing for transitional and savings provisions.<sup>16</sup>

41. According to paragraph 13 of the LegCo Brief (File Ref: B&M/2/1/63C) issued by the Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority ("HKMA") on 16 May 2018, HKMA consulted the industry on the policy intent to reform section 87 of Cap. 155 in March 2016 and the details of draft L.N. 101 in March 2018. According to the Administration, comments received from those consultations have been taken

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<sup>12</sup> See rule 8 of L.N. 101.

<sup>13</sup> Equity exposure ratio is defined in rule 7 of L.N. 101 to mean, in relation to an AI, the ratio, expressed as a percentage, of the sum of the AI's aggregate equity exposures to the amount of the AI's capital calculated in accordance with L.N. 101.

<sup>14</sup> See rule 10 of L.N. 101.

<sup>15</sup> See Division 4 of Part 2 of L.N. 101.

<sup>16</sup> See Part 3 of L.N. 101.

into account in preparing L.N. 101. Further, HKMA has pursuant to section 81A of Cap. 155 conducted a consultation of the draft L.N. 101 and received general support from the consultees.

42. As advised by the Clerk to the Panel on Financial Affairs, members of the Panel were informed at the Panel meeting on 5 February 2018 that HKMA planned to submit L.N. 101 to replace the obsolete equity exposure provision (i.e. section 87 of Cap. 155), and to implement the new BCBS's large exposures framework ("Basel Framework"). Members did not raise objection to HKMA's plan. The Clerk to the Bills Committee on the Banking (Amendment) Bill 2017 has advised that the Administration has not consulted the Bills Committee on L.N. 101 and, when deliberating on the Bill, the Bills Committee noted the views expressed by deputations of the banking industry that the schedule for AIs to prepare for the implementation of the Basel Framework (i.e. by 1 January 2019) was rather tight. The deputations requested the Administration to allow sufficient time for the industry to make the necessary arrangements before the relevant subsidiary legislation comes into effect. The Administration responded that it would keep close communication with the banking industry, consult the industry on the proposed rules as soon as practicable and address the deputations' concerns as appropriate.

43. L.N. 101 comes into operation on 13 July 2018, i.e. the day on which section 9 of Ord. No. 6 of 2018 comes into operation by virtue of L.N. 102 reported below.

#### L.N. 102

44. L.N. 102 is made by SFST under section 1(2) of Ord. No. 6 of 2018 to appoint 13 July 2018 as the day on which the following provisions of Ord. No. 6 of 2018 come into operation:

- (a) sections 5, 9, 12, 15 and 16(1) — these provisions mainly concern the limitations on loans by and interests of AIs, MA's rule-making power, the repeal of sections 87 and 90 of Cap. 155 (which concern limitations on shareholding by an AI and the limitation on aggregate holdings);
- (b) section 16(2) (except in so far as it relates to the repeal of the reference to sections 80, 81, 83, 85 and 88 of Cap. 155) which mainly concerns the notification, remedial and compliance requirements relating to an AI, and the repeal of the restrictions on the shareholdings of AIs provided under section 87 of Cap. 155;

- (c) sections 17, 18, 19(2) and 23 — these provisions include provisions relating to compliance requirements and transitional arrangements in relation to the repeal of section 87 of Cap. 155;
- (d) section 24 in so far as it relates to the repeal of section 150(10) of Cap. 155 to the extent of the reference to sections 87(1), 87(3) (wherever it appears), 90(1) and 90(3) (wherever it appears) of Cap. 155 — these provisions mainly relate to the transitional arrangements to the amendments made by the Banking (Amendment) (No. 2) Ordinance 1991 in respect of certain contraventions of an AI; and
- (e) section 25 which mainly concern the minimum criteria for authorization provided under the Seventh Schedule to Cap. 155.

45. As advised by the Clerks to the Panel on Financial Affairs and the Clerk to the Bills Committee on the Banking (Amendment) Bill 2017, the Panel and the Bills Committee have not been consulted on L.N. 102.

46. Upon our enquiry with the Administration, the Administration advised that the remaining provisions of Ord. No. 6 of 2018 might be brought into operation in the first quarter of 2019 to allow time for making the necessary subsidiary legislation.

## **PART V SUBSIDIARY LEGISLATION MADE UNDER THE TELECOMMUNICATIONS ORDINANCE (CAP. 106)**

**Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2018 (L.N. 103)**

**Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2018 (L.N. 104)**

**Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2018 (L.N. 105)**

**Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1800 MHz Band) Regulation (L.N. 106)**

## Background

47. At present, certain spectrum in the 900 MHz band and 1800 MHz band have been assigned to four mobile network operators under the Telecommunications Ordinance (Cap. 106) to provide mobile telecommunication services. According to paragraph 2 of the LegCo Brief (File Ref: CCIB/B 480-020-008-001-009C) issued by the Commerce and Economic Development Bureau on 16 May 2018, the assignments of these spectrum will expire in 2020/2021 and a total of 200 MHz of spectrum in the 900 MHz and 1800 MHz bands will become available for assignment/re-assignment in 2020/2021. In December 2017, the Communications Authority ("CA") and the Secretary for Commerce and Economic Development ("SCED") announced the decision to adopt a hybrid administratively-assigned cum market-based approach for the re-assignment of the said 200 MHz of spectrum upon expiry of the existing assignments ("the Decision"). L.N. 103 to L.N. 106 are made to give effect to the Decision.

48. According to the Decision and paragraph 9 of the LegCo Brief, the new 15-year term of assignment for the spectrum in the 900 MHz band and 1800 MHz band will be aligned to commence on 12 January 2021 and 30 September 2021 respectively. For alignment purpose, it is necessary to align the different expiry dates of the existing assignments of spectrum in the 900 MHz band (which fall on dates between 19 November 2020 and 11 January 2021)<sup>17</sup> by granting an administrative extension of the existing assignments so that the terms of assignment of spectrum in the 900 MHz band would expire on 11 January 2021 ("administrative extension") and to facilitate the new assignment term for 900 MHz band to commence on 12 January 2021.

## L.N. 103

49. L.N. 103 is made by CA under section 32I(1) of Cap. 106 after carrying out the consultation required under section 32G(2) of Cap. 106. It amends the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y) by adding a new Part 2B to the Schedule to designate additional frequency bands (namely, 1710 – 1710.5 MHz, 1784.9 – 1785 MHz, 1805 – 1805.5 MHz and 1879.9 – 1880 MHz)

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<sup>17</sup> According to footnote 4 of the LegCo Brief, the alignment will involve an administrative extension of the existing frequency assignment in the 900 MHz band for Hutchison Telephone Company Limited by 53 calendar days from 20 November 2020, and for SmarTone Mobile Communications Limited by eight calendar days from 4 January 2021, so that the term of assignments of all the spectrum in the 900 MHz band would expire on 11 January 2021, subject to their payment of SUF for the use of spectrum during the extended assignment periods.



in which the use of spectrum is subject to the payment of spectrum utilization fee ("SUF").

#### L.N. 104

50. The Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap. 106AA) prescribes the level of SUF payable by users of spectrum that falls within the frequency bands set out in Parts 2 and 2A (i.e. 900 MHz and 1800 MHz bands) of the Schedule to Cap. 106Y for their respective existing assignment periods until 2020/2021.

51. L.N. 104, made by SCED under section 32I of Cap. 106, amends Cap. 106AA to :

- (a) provide that Cap. 106AA only applies in relation to the use of the relevant spectrum on or before the expiry dates of the relevant existing assignment periods, i.e. 11 January 2021 for 890 – 915 MHz and 935 – 960 MHz set out in Part 2 of the Schedule to Cap. 106Y; and 29 September 2021 for 1710.5 – 1780.1 MHz and 1805.5 – 1875.1 MHz set out in Part 2 of the said Schedule and for the frequency bands set out in Part 2A of the said Schedule; and
- (b) prescribe the level of SUF for the period of administrative extension of the relevant existing assignments of spectrum that falls within the frequency bands set out in Part 2 of the Schedule to Cap. 106Y.

#### L.N. 105

52. L.N. 105 is made by SCED under section 32I of Cap. 106 to amend the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC) to:

- (a) provide for the determination by auction, and the payment, of SUF for using the spectrum
  - (i) in the 900 MHz band (set out in the new Schedule 2 to Cap. 106AC) for the new assignment term of 15 years commencing on 12 January 2021;
  - (ii) in the 1800 MHz band (set out in the new Schedule 3 to Cap. 106AC) and any spectrum (in the 1800 MHz band set out in the Schedule to L.N. 106 which is not assigned to existing assignee because CA's offer to assign the spectrum for a new assignment

term of 15 years has not been accepted), for the new assignment term of 15 years commencing on 30 September 2021;

- (b) specify the payment of SUF by way of a lump sum payment or in 15 annual instalments; and
- (c) provide for exemption from payment of SUF for the use of the spectrum that falls within certain frequency bands through a base station in a designated area for the sole purpose of providing mobile telecommunications services within the designated area<sup>18</sup>.

### L.N. 106

53. L.N. 106 is made by SCED under section 32I of Cap. 106 to provide for the determination of SUF payable by an existing assignee (who has been assigned the spectrum that falls within the 1800 MHz band set out in Parts 2 and 2A of the Schedule to Cap. 106Y) for a period of 15 years from 30 September 2021 after the existing assignment period expires on 29 September 2021, if the assignee accepts the CA's offer of new assignment of spectrum.

### Consultation

54. According to paragraph 17 of the LegCo Brief, the Administration conducted two rounds of public consultation in 2016 and 2017 respectively to solicit views and comments of the telecommunications industry and the general public on the re-assignment arrangements for the 900/1800 MHz spectrum and the methods for determining the concerned SUF.

55. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Administration briefed at the Panel on 12 February 2018 on the arrangements for the re-assignment of 200 MHz spectrum in the 900 MHz and 1800 MHz bands upon expiry of the existing arrangements and the methods for determining the related SUF. The Administration informed the Panel that the relevant subsidiary legislation would be tabled in LegCo for negative vetting to effect SUF and to enable the respective spectrum to be auctioned in the second quarter of 2018. Panel members raised no objection to the proposed spectrum re-assignment arrangements or the methods for determining SUF.

### Commencement

56. L.N. 103 to L.N. 106 come into operation on 13 July 2018.

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<sup>18</sup> According to paragraph 12 of the LegCo Brief, the designated areas would be country parks and remote areas.

## **PART VI MISCELLANEOUS ITEMS**

### **Inland Revenue (Double Taxation Relief and Prevention of Tax Evasion with respect to Taxes on Income) (Kingdom of Saudi Arabia) Order**

**(L.N. 89)**

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

58. L.N. 89 is made by CE in Council under section 49(1A) of Cap. 112 to give effect to the Comprehensive Avoidance of Double Taxation Agreement ("CDTA") between the Government of the Hong Kong Special Administrative Region and the Government of the Kingdom of Saudi Arabia ("Saudi Arabia") signed on 24 August 2017 ("Agreement").

59. According to paragraph 3 of the LegCo Brief (File Ref: Tsy B R2 183/800-1-1/40/0(C)) issued by the Financial Services and the Treasury Bureau on 16 May 2018, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Although many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, a CDTA will enhance the certainty in respect of the elimination of double taxation. Besides, the tax relief provided under a CDTA may exceed the level provided unilaterally by the tax jurisdiction concerned.

60. For the purposes of section 49(1A) of Cap. 112, L.N. 89 declares that the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 7 of the Protocol thereto have been made for the purposes of affording relief from double taxation and exchanging information in relation to any tax imposed by the laws of Hong Kong or Saudi Arabia, and that it is expedient that those arrangements should have effect. These provisions in the Agreement and the Protocol set out the allocation of taxing rights between Hong Kong and Saudi Arabia and the relief on tax rates on different types of income. Members may refer to Annexes A and C to the LegCo Brief for further details. The Agreement also contains an article on exchange of information which is based on the Organisation for Economic Cooperation and Development 2004 version of the Exchange of Information ("EoI") Article. A sample EoI Article was presented to the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill

2009 vide LC Paper No. CB(1)466/09-10(02). It is noted that consistent with the sample Article, the Agreement provides that (a) information should be exchanged upon request; (b) the requested information must be foreseeably relevant; (c) the information received by a contracting party shall be treated as secret; (d) the information shall be disclosed only to the tax authorities (including courts and administrative bodies) but not their oversight bodies nor any third jurisdiction; and (e) there is no obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to the public policy.

61. The effect of the declaration mentioned in paragraph 60 above are:
- (a) that the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment; and
  - (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of Saudi Arabia, have effect in relation to any tax of Saudi Arabia that is the subject of that provision.
62. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 89.
63. L.N. 89 comes into operation on 13 July 2018.

**Land Survey (Fees) (Amendment) Regulation 2018 (L.N. 95)**

64. L.N. 95 is made by SFST under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 37 of the Land Survey Ordinance (Cap. 473)<sup>19</sup> to adjust the seven items of fees specified in the Schedule to the Land Survey (Fees) Regulation (Cap. 473A) as follows:

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<sup>19</sup> Section 37(1) of Cap. 473 provides that CE in Council may make regulations to provide for the fees and charges payable under Cap. 473. Section 29A(1) of Cap. 1 provides, among other things, that where the amount of any fee or charge is for the time being specified in, or otherwise fixed or determined by, subsidiary legislation made by CE in Council, the Financial Secretary may by similar subsidiary legislation increase or decrease, or otherwise vary, the amount of the fee or charge. Section 3 of Cap. 1 defines the Financial Secretary to include SFST.

<b>Item in Schedule to Cap. 473A</b>	<b>Description</b>	<b>Existing fee</b>	<b>New fee</b>
1.	Inspection of land boundary record— (a) For each land boundary plan included in the record (b) For each survey record plan included in the record	\$76 \$76	\$75 \$75
2.	Supply of copies of plans— (a) For each copy of land boundary plan (b) For each copy of survey record plan	\$105 \$105	\$115 \$115
3.	Deposit of land boundary plan and corresponding survey record plan with the Land Survey Authority	\$3,590	\$3,920
4.	Registration as an authorized land surveyor	\$5,850	\$7,680
5.	Renewal of registration as an authorized land surveyor	\$1,020	\$1,290

65. The above fees were last revised in March 2016.<sup>20</sup> According to paragraphs 4 and 6 of the LegCo Brief (File Ref: DEVB (PL-CR) 4-60/036/6) issued by the Development Bureau in May 2018, the reduction of the fee for inspection of land boundary record by about 1.3% and the fee increases by about 10% to 20% for the other items are in line with the user-pays principle and are made with reference to the items' full-cost levels. In relation to items 2 to 5, the Administration increases those fee items to full-cost levels in one go for cost-effectiveness.

66. As advised by the Clerk to the Panel on Development, the Administration provided an information paper (LC Paper No. CB(1)829/17-18(01)) to the Panel in April 2018 on the proposed revision of the above fee items. The Administration advised in the aforesaid paper that it planned to table the proposed revision before LegCo for negative vetting. The paper was circulated to members of the Panel on 18 April 2018. By the deadline specified in the circular attached to the above LC Paper, no requests were received from members to discuss the matter at a Panel meeting.

67. L.N. 95 comes into operation on 31 July 2018.

<sup>20</sup> See L.N. 2 of 2016 and the Legal Service Division Report (LC Paper No. LS27/15-16).

**Declaration of Mental Hospital (Consolidation)  
(Amendment) Order 2018**

**(L.N. 100)**

68. L.N. 100 is made by CE under section 3 of the Mental Health Ordinance (Cap. 136) after consultation with the Executive Council. It amends the Schedule to the Declaration of Mental Hospital (Consolidation) Order (Cap. 136B) to declare Ward 8D on the eighth floor of the Main Building of the Kowloon Hospital as part of the Kowloon Psychiatric Observation Unit at the Kowloon Hospital which has been declared to be a mental hospital under section 3 of Cap. 136 for the detention, custody, treatment and care of mentally disordered persons.

69. Members may refer to the LegCo Brief (File Ref: FH CR 1/3261/14) issued by the Food and Health Bureau on 16 May 2018 for background information.

70. As advised by the Clerk to the Panel on Health Services, the Panel was consulted on 24 April 2018 on L.N. 100. Members had no objection to the proposed addition of a new psychiatric ward to the Kowloon Psychiatric Observation Unit of the Kowloon Hospital but raised concerns on the additional healthcare manpower requirement for the new ward.

71. L.N. 100 comes into operation on 1 October 2018.

**Concluding Observations**

72. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 89, L.N. 91 to L.N. 94, L.N. 97 and L.N. 101, and a further report will be made if necessary. No difficulties have been identified in relation to the legal and drafting aspects of the other items of subsidiary legislation.

Prepared by

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