

# 立法會

## *Legislative Council*

LC Paper No. LS94/17-18

**Paper for the House Committee Meeting  
on 5 October 2018**

**Legal Service Division Report on  
Subsidiary Legislation gazetted between 6 July and 21 September 2018**

### Purpose

This paper annexes nine reports of the Legal Service Division ("LSD") on subsidiary legislation gazetted between 6 July and 21 September 2018 ("the Reports") for consideration by the House Committee and highlights certain items of subsidiary legislation for Members' particular attention.

### Subsidiary legislation gazetted between 6 July and 21 September 2018

2. The Reports have been separately submitted to Members vide LC Paper Nos. LS82/17-18, LS83/17-18, LS85/17-18 to LS88/17-18, LS90/17-18, LS92/17-18 and LS93/17-18. The Reports cover two groups of subsidiary legislation as follows-

- (a) six items gazetted on 6 July 2018 (L.N. 135 to L.N. 140) which were tabled in the Legislative Council ("LegCo") on 11 July 2018 (**Annex A**); and
- (b) 14 items gazetted between 13 July and 21 September 2018 (L.N. 142 and L.N. 145 to L.N. 157) of which ten items will be tabled on 10 October 2018 and the remaining four items are not required to be tabled in LegCo (**Annex B**).

3. In accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), LegCo may amend the items of subsidiary legislation tabled on 11 July 2018 by the Council meeting of **24 October 2018** (or by that of 14 November 2018 if extended by resolution), and the items to be tabled on 10 October 2018 by the Council meeting of **7 November 2018** (or by that of 28 November 2018 if extended by resolution) respectively.

4. Members will note that the Reports include four items of subsidiary legislation to which section 34 of Cap. 1 does not apply and which are therefore not required to be tabled in, and not subject to amendment by, LegCo. Part II of **Annex B** sets out these four items of subsidiary legislation for Members' easy reference.

Items for particular attention

5. Members may wish to pay particular attention to the following items of subsidiary legislation -

- (a) District Court Ordinance – Resolution of the Legislative Council (Commencement) Notice (L.N. 138)
- (b) Small Claims Tribunal Ordinance – Resolution of the Legislative Council (Commencement) Notice (L.N. 139)

L.N. 138 and L.N. 139 are made by the Chief Justice to appoint 3 December 2018 as the day on which the two resolutions passed by LegCo on 27 June 2018 (i.e. L.N. 131 and L.N. 132) come into operation. Those two resolutions adjust the civil jurisdictional limits of the District Court ("DC") and the Small Claims Tribunal ("SCT") by, among others, increasing the general financial limit of civil jurisdiction of DC from \$1 million to \$3 million and that of SCT from \$50,000 to \$75,000 respectively.

- (c) Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order (L.N. 142)

L.N. 142 is made by the Chief Executive ("CE") in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) to give effect to the Convention on Mutual Administrative Assistance in Tax Matters ("Convention") in Hong Kong. Upon LSD's enquiry, the Administration has clarified that Hong Kong will not as a general rule participate in any simultaneous tax examinations, or exchange any information protected by legal professional privilege ("LPP"), under the Convention and that the restriction on disclosure of LPP material is legally binding on the Inland Revenue Department ("IRD").

- (d) Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Commencement) Notice (L.N. 154)

L.N. 154 is made by the Secretary for Transport and Housing to appoint 4 September 2018 as the date of commencement of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632). Cap. 632 implements the co-location arrangement at the West Kowloon Station of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") by declaring an area as the West Kowloon Station Mainland Port Area ("MPA") and provides for the application of

Mainland and Hong Kong laws in MPA and the delineation of jurisdiction (including jurisdiction of the courts) over MPA. Upon LSD's enquiry, the Administration has explained that Cap. 632 came into operation on 4 September 2018 to enable Mainland personnel to conduct final preparatory work at MPA, for example, to ensure the timely delivery of all requisite materials to MPA and to familiarize themselves with the relevant operational procedures, prior to the actual commissioning of the Hong Kong Section of XRL on 23 September 2018.

- (e) Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order (L.N. 155)
- (f) Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order (L.N. 156)

These two Orders are made by CE in Council under section 49(1A) of Cap. 112 to give effect to the Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") with India and Finland. It is noted that certain aspects of the Exchange of Information ("EoI") arrangements under the two CDTAs are different from those under the sample EoI Article such as the tax information received under the CDTAs may be used for non-tax related purposes, and certain bodies listed in the CDTA signed with India may receive tax information exchanged. Upon LSD's enquiry, the Administration has explained that the tax information received under the said CDTAs may only be used for limited non-tax related purposes. The Administration has also confirmed its policy that the use of tax information exchanged for non-tax related purposes under a CDTA should only be allowed when such use is allowed under the laws of both contracting parties and the tax authority of the supplying party authorizes such use, and that IRD would only give such authorization if the intended use is exempted under section 58 of the Personal Data (Privacy) Ordinance (Cap. 486) in relation to the prevention or detection of crimes under the laws of a place outside Hong Kong with which Hong Kong has legal or law enforcement cooperation.

- (g) United Nations Sanctions (ISIL and Al-Qaida) Regulation (L.N. 157)

Made by CE under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign

Affairs of the People's Republic of China and after consultation with the Executive Council, this Regulation implements the Resolution made by the Security Council of the United Nations on 20 July 2017 to impose sanctions of assets freeze, travel ban and arms embargo against the Islamic State in Iraq and the Levant and Al-Qaida. Although this Regulation is not required to be tabled in, and is not subject to amendment by, LegCo pursuant to section 3(5) of Cap. 537, it comes within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("the Subcommittee"). Members may consider referring L.N. 157 to the Subcommittee for its consideration. This Regulation was circulated to members of the Subcommittee on 21 September 2018.

6. The Secretariat has circulated to Members the issues of the Gazette which contain the subsidiary legislation covered by the Reports in the usual manner. Members may also view the relevant issues of the Gazette at <http://www.gld.gov.hk/egazette>.

#### Concluding observations

7. Subject to Members' views on matters in relation to L.N. 155 and L.N. 156 mentioned above, no difficulties have been identified in relation to the legal and drafting aspects of the subsidiary legislation covered by the Reports.

#### Encls.

Prepared by  
Legal Service Division  
Legislative Council Secretariat  
4 October 2018  
LS/S/36/17-18

**Subsidiary Legislation gazetted on 6 July 2018**

*Subsidiary legislation tabled on 11 July 2018*

No.	L.N. No.	Item
1.	135	Air Pollution Control (Fuel for Vessels) Regulation
2.	136	Pharmacy and Poisons (Amendment) (No. 4) Regulation 2018
3.	137	Construction Workers Registration (Levy) (Amendment) Notice 2018
4.	138	District Court Ordinance – Resolution of the Legislative Council (Commencement) Notice
5.	139	Small Claims Tribunal Ordinance – Resolution of the Legislative Council (Commencement) Notice
6.	140	Small Claims Tribunal (Fees) (Amendment) Rules 2018

**Subsidiary Legislation gazetted between 13 July and 21 September 2018***I. Subsidiary legislation to be tabled on 10 October 2018*

No.	L.N. No.	Item
1.	142	Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order
2.	147	Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2018
3.	148	Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2018
4.	149	Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2018
5.	150	Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2018
6.	151	Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2018
7.	152	Electoral Procedure (Rural Representative Election) (Amendment) Regulation 2018
8.	154	Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Commencement) Notice
9.	155	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order
10.	156	Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order

*II. Subsidiary legislation not required to be tabled and not subject to amendment by LegCo*

No.	L.N. No.	Item
1.	145	Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2018
2.	146	Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2018
3.	153	Volunteer and Naval Volunteer Pensions Ordinance (Amendment of Schedules) Order 2018
4.	157	United Nations Sanctions (ISIL and Al-Qaida) Regulation

**立法會**  
**Legislative Council**

LC Paper No. LS82/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 6 July 2018**

**Tabling in LegCo** : Council meeting of 11 July 2018

**Amendment to be made by** : Council meeting of 24 October 2018 (or that of 14 November 2018 if extended by resolution)

**Air Pollution Control (Fuel for Vessels) Regulation** **(L.N. 135)**

L.N. 135 is made by the Secretary for the Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment ("ACE") to make it mandatory for vessels to use certain fuels when they are within the waters of Hong Kong, and to provide for the requirement to keep records and documents in respect of certain vessels.

2. The key provisions of L.N. 135 are summarized as follows:
- (a) under section 2, compliant fuel means low sulphur marine fuel with sulphur content not exceeding 0.5% by weight, liquefied natural gas, or any fuel approved by the air pollution control authority ("the Authority");
  - (b) sections 5 and 6 provide for the prohibition of the use of non-complaint fuel by vessels when they are in the waters of Hong Kong, and the offence and penalty in relation to contravention of the prohibition by the owner or the master of the vessels concerned (i.e. liable on conviction to a fine of \$200,000 and to imprisonment for six months);
  - (c) sections 7 to 11 empower the Authority to exempt a vessel from the prohibition of the use of non-compliant fuel within Hong Kong waters under certain conditions upon the application by the owner, the master or the agent of a vessel and to revoke the exemption on certain grounds;
  - (d) sections 12 to 15 provide for (i) the requirements in respect of the particulars that must be recorded in a log book of an ocean going vessel in the waters of Hong Kong, the keeping of documents on the vessel and the submission of copies of documents to the Authority and (ii) the offences and penalties in relation to contravention of the requirements (i.e. liable on conviction to a fine at level 5 (i.e. \$50,000) and to imprisonment for three months);

- (e) section 16 empowers the Authority to approve a fuel as compliant fuel under certain circumstances and section 17 provides for the test methods for determining the sulphur content of a fuel;
- (f) section 18 repeals the Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation (Cap. 311AA), the scope of control under which are covered by L.N. 135, and section 19 provides for transitional arrangements relating to Cap. 311AA; and
- (g) the Schedule sets out the details of the transitional and savings provisions.

3. L.N. 135 does not apply to a warship or any other vessel on military service, or a vessel that does not carry any compliant fuel for operating its specified machinery but enters the waters of Hong Kong solely for the purpose(s) of reducing risks to the safety of the vessel, sheltering from stress of weather, and/or landing a sick or injured person, provided that the owner or the master of the vessel has notified the Director of Marine of such purpose(s) before the vessel enters the waters of Hong Kong (section 3 of L.N. 135).

4. According to the Legislative Council ("LegCo") Brief (File Ref: EP 150/NV/50) issued by the Environmental Protection Department in July 2018, L.N. 135 is made following the Chief Executive's announcement in her Policy Address in October 2017 to mandate vessels in Hong Kong waters to use low sulphur fuel starting from January 2019. According to paragraphs 20 and 21 of the LegCo Brief, relevant stakeholders, including shipping agents, trade associations, fishing associations, ferry operators, yacht clubs, classification societies, terminal operators, oils suppliers, green groups, chambers of commercial/professionals institutions and consulates were consulted respectively in 2017. They were supportive of the proposed control. In July 2017, the ACE discussed and supported the proposal.

5. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 17 July 2017. Members did not raise any objection to the proposal, but urged the Administration to inform the shipping trade early on the way forward of further controlling marine emissions. The Panel also discussed issues including incentive schemes to offset additional fuel cost implications on the trade and other measures to reduce marine emissions.

6. L.N. 135 comes into operation on 1 January 2019.

## **Pharmacy and Poisons (Amendment) (No. 4) Regulation 2018 (L.N. 136)**

7. L.N. 136 is made by the Pharmacy and Poisons Board ("PPB") under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health. It amends the Pharmacy and Poisons



Regulations (Cap. 138A) by adding one item of substance (i.e. nusinersen; its salts) ("the substance") to Division A of Schedule 1 to Cap. 138A, Division A of Schedule 3 to Cap. 138A and Division A of Part 1 of the Poisons List set out in Schedule 10 to Cap. 138A ("Poisons List").

8. The effect of L.N. 136 is that the substance is subject to restrictions concerning its sale, supply, labelling and storage, and that it can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Further, the inclusion of the substance in the Poisons List means that it can only be sold on registered premises of an authorized seller of poisons by a registered pharmacist or in the presence and under the supervision of a registered pharmacist.

9. According to paragraph 4 of the LegCo Brief (File Ref.: FHB/H/23/4) issued by the Food and Health Bureau in July 2018, PPB considers the amendments appropriate in view of the potency, toxicity and potential side effects of the substance. Members may refer to Annex B to the LegCo Brief for details of the substance.

10. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 136.

11. L.N. 136 came into operation on the day on which it was published in the Gazette, i.e. 6 July 2018.

### **Construction Workers Registration (Levy) (Amendment) Notice 2018**

**(L.N. 137)**

12. L.N. 137 is made by the Secretary for Development under section 23 of the Construction Workers Registration Ordinance (Cap. 583) to raise the upper limit of the total value of construction operations that are not liable to levy under Cap. 583 from \$1 million to \$3 million.

13. Under section 23(1) of Cap. 583, a levy at the prescribed rate is to be imposed on the value of all construction operations undertaken or carried out in Hong Kong. Section 23(2) of Cap. 583 provides that construction operations the total value of which does not exceed the prescribed amount shall not be liable to the levy (i.e. levy threshold). Section 3 of the Construction Workers Registration (Levy) Notice (Cap. 583A) prescribes the amount for the purpose of section 23(2) to be \$1 million which has remained unchanged since Cap. 583A came into operation in February 2005.

14. According to the first paragraph of the LegCo Brief (File Ref: DEVB(CR)(W)1-10/22) issued by Development Bureau in July 2018, the making of L.N. 137 is to align the levy threshold under Cap. 583 with those under the Construction Industry Council Ordinance (Cap. 587) and the Pneumoconiosis and

Mesothelioma (Compensation) Ordinance (Cap. 360) which were raised from \$1 million to \$3 million by resolutions passed by LegCo on 27 June 2018.<sup>1</sup>

15. A subcommittee was formed to study the two proposed resolutions under Cap. 587 and Cap. 360 ("Subcommittee") before they were passed by LegCo. Members may refer to the report of the Subcommittee dated 13 June 2018 (LC Paper No. CB(1)1115/17-18) for further details.

16. As advised by the Clerk to the Panel on Development, the Administration briefed the Panel on 27 March 2018 on the proposal to raise the levy threshold under Cap. 583 and Members did not object to the proposal. The Administration also advised the Panel that the levy threshold under Cap. 583 would be raised along with the same increase in the levy thresholds under Cap. 587 and Cap. 360 on the same effective date.

17. L.N. 137 comes into operation on 30 July 2018. i.e. the same date on which the two resolutions under Cap. 587 and Cap. 360 come into operation.

**District Court Ordinance — Resolution of the Legislative Council (Commencement) Notice (L.N. 138)**

**Small Claims Tribunal Ordinance — Resolution of the Legislative Council (Commencement) Notice (L.N. 139)**

**Small Claims Tribunal (Fees) (Amendment) Rules 2018 (L.N. 140)**

L.N. 138 and L.N. 139

18. By L.N. 138 and L.N. 139, the Chief Justice has appointed 3 December 2018 as the day on which the two resolutions passed by LegCo on 27 June 2018 and published in the Gazette as L.N. 131 of 2018 and L.N. 132 of 2018 come into operation.

19. L.N. 131 and L.N. 132 were respectively made under section 73A of the District Court Ordinance (Cap. 336) and section 6 of the Small Claims Tribunal Ordinance (Cap. 338) to adjust the civil jurisdictional limits of the District Court ("DC") and the Small Claims Tribunal ("SCT") respectively, including the increase of the general financial limit of the civil jurisdiction of DC from \$1 million to

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<sup>1</sup> The two resolutions under Cap. 587 and Cap. 360 were passed by LegCo on 27 June 2018 and published in the Gazette as L.N. 133 of 2018 and L.N. 134 of 2018 respectively on 29 June 2018. Under section 70(2) and (5) of Cap. 587 and section 36(2) and (5) of Cap. 360, the two resolutions will come into effect on the expiry of the period of 30 days after publication in the Gazette (i.e. 30 July 2018).

\$3 million and the increase of the general financial limit of civil jurisdiction of SCT under paragraphs 1 and 2(b) of the Schedule to Cap. 338 from \$50,000 to \$75,000.<sup>2</sup>

20. A subcommittee was formed to study the two proposed resolutions under Cap. 336 and Cap. 338 ("Subcommittee") before they were passed by LegCo. Members may refer to the report of the Subcommittee dated 6 June 2018 (LC Paper No. CB(4)1194/17-18) for further details.

L.N. 140

21. L.N. 140 is made by the Chief Justice under section 36 of Cap. 338 to amend the Small Claims Tribunal (Fees) Rules (Cap. 338B).

22. Item 1 of the Schedule to Cap. 338B specifies four levels of fees for filing of claims by parties at SCT based on four ranges of claim amounts. Currently, the maximum claim amount is \$50,000, being the current jurisdictional limit of SCT. To align with the increase in the jurisdictional limit of SCT from \$50,000 to \$75,000 by L.N. 132 of 2018, L.N. 140 increases the maximum claim amount specified in item 1 of the Schedule to Cap. 338B from \$50,000 to \$75,000 and adjusts the ranges of claim amounts as follows:

<b>Current range of claim amounts</b>	<b>Revised range of claim amounts</b>	<b>Fee (\$)</b>
where the claim does not exceed \$3,000	for a claim that does not exceed \$5,000	20
where the claim exceeds \$3,000 but does not exceed \$17,000	for a claim that exceeds \$5,000 but does not exceed \$25,000	40
where the claim exceeds \$17,000 but does not exceed \$33,000	for a claim that exceeds \$25,000 but does not exceed \$50,000	70
where the claim exceeds \$33,000 but does not exceed \$50,000	for a claim that exceeds \$50,000 but does not exceed \$75,000	120

23. According to paragraph 8 of the LegCo Brief (File Ref: LM(3) to SC 101/17/16) issued by the Judiciary Administration in July 2018, each range of claim amounts under item 1 of the Schedule to Cap. 338B is adjusted upwards by a percentage which corresponds with the percentage increase in the SCT's jurisdictional limit. The existing fee in respect of each range of claim amounts remains unchanged.

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<sup>2</sup> Other adjustments to the civil jurisdictional limits of DC under L.N. 131 of 2018 include increasing the financial limit for land matters of DC from \$240,000 to \$320,000 (in terms of the annual rent or the rateable value or the annual value of the land); increasing the limit for the equity jurisdiction of DC where the proceedings do not involve or do not relate to land from \$1 million to \$3 million; and increasing the limit for the equity jurisdiction of DC where the proceedings involve or relate to land from \$3 million to \$7 million.

24. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel was consulted at its meeting on 24 April 2017 on the proposed increase in civil jurisdictional limits of DC and SCT and members raised no objection to the proposal. Members also noted and raised no objection to the consequential amendments to Cap. 338B.

25. L.N. 140 comes into operation on the day on which L.N. 132 of 2018 comes into operation, i.e. 3 December 2018.

### **Concluding observations**

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

Prepared by

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19 July 2018

**立法會**  
**Legislative Council**

LC Paper No. LS83/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 13 July 2018**

**Tabling in LegCo** : Council meeting of 10 October 2018

**Amendment to be made by** : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order** **(L.N. 142)**

The Inland Revenue Ordinance (Cap. 112), as amended by the Inland Revenue (Amendment) Ordinance 2018 (Ord. No. 5 of 2018) ("Amendment Ordinance"), empowers the Chief Executive ("CE") in Council to give effect to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and other tax agreements that apply to Hong Kong. Under section 49(1A) of Cap. 112, if CE in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect in Hong Kong. Section 49(1AB) of Cap. 112, as added by the Amendment Ordinance, provides that the arrangements that may be specified in an order under section 49(1A) would include arrangements that are made with more than one government, and arrangements that are made by the Central People's Government ("CPG") and applied to Hong Kong (including the Convention).

2. L.N. 142 was made by CE in Council under section 49(1A) of Cap. 112 to give effect to the Convention on Mutual Administrative Assistance in Tax Matters ("the Convention")<sup>1</sup> in Hong Kong. It declares that for the

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<sup>1</sup> According to paragraphs 7 to 9 of the Legislative Council Brief (File Ref.: TsyB R2 00/800-2/1/0(C)) issued by the Financial Services and the Treasury Bureau on 11 July 2018, the Convention was jointly developed by the Organization for Economic Co-operation and Development and the Council of Europe in 1988 and amended by a Protocol in 2010. It provides a multi-party platform which allows participating jurisdictions to mutually agree with each other on all possible forms of administrative co-operation in the assessment and collection of taxes, including various modes of exchange of information. Pursuant to Article 29(2) of the Convention, the Convention will enter into force in respect of Hong Kong on 1 September 2018.

purposes of section 49(1A) of Cap. 112, the following arrangements have been made by CPG and applied to Hong Kong and it is expedient that those arrangements should have effect:

- (a) the Convention signed by CPG on 27 August 2013 in the English language reproduced in Schedule 1;
  - (b) the Declarations and Reservations made under the Convention by CPG on 29 May 2018 in the English language reproduced in Schedule 2; and
  - (c) the Declaration on the Effective Date for Exchanges of Information under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information made under the Convention by CPG on 25 June 2018 in the English language reproduced in Schedule 3.
3. The legal effects of the above declaration include the following:
- (a) the Convention, including the provisions relating to exchange of information concerning the taxes covered by the Convention and the safeguard measures,<sup>2</sup> shall apply to Hong Kong;
  - (b) the types of assistance that Hong Kong will not provide include assisting in the recovery of tax claim or administrative fine, service of documents; and service of documents through post under the Convention;
  - (c) information on the types of taxes in Hong Kong that are subject to exchange with the relevant jurisdictions are profits tax, salaries tax and property tax;
  - (d) the Commissioner of Inland Revenue of the Hong Kong Government or the authorized representative of the Commissioner is the competent authority of Hong Kong;
  - (e) Hong Kong may inform its resident or national before the information concerning that resident or national is transmitted to another party to the Convention when handling exchange of information on request under the Convention; and

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<sup>2</sup> The safeguard measures include: (a) the information exchanged should be foreseeably relevant for the administration or enforcement of the receiving party's domestic laws concerning the taxes covered by the Convention; and (b) the information received by a party under the Convention shall be treated as secret and should not be disclosed to a third party without prior authorization of the supplying party.

- (f) Hong Kong and other parties to the Convention that have made similar declarations as that stated in paragraph 2(c) above agree to provide administrative assistance under Article 6 of the Convention in relation to automatic exchange of financial account information and under Article 5 of the Convention in relation to follow-up requests related to financial account information exchanged for taxable periods earlier than the date on which the Convention comes into effect between Hong Kong and the relevant parties.

4. In relation to Articles 8 and 21 of the Convention reproduced in Schedule 1 to L.N. 142, the Legal Service Division ("LSD") has asked the Administration to clarify Hong Kong's position regarding simultaneous tax examinations under the Convention and whether confidential communications protected by legal professional privilege ("LPP") would be protected from disclosure. The Administration's reply is summarized as follows:

- (a) as a general rule, Hong Kong will not participate in any simultaneous tax examinations. Indeed, Article 8 provides that it will be up to a jurisdiction to decide whether to participate in a particular simultaneous tax examination, and hence no reservation concerning such examinations is required; and
- (b) LPP communications will be protected from disclosure under the Convention. LPP is also protected by virtue of section 51(4A) of Cap. 112 and the Departmental Interpretation and Practice Notes No. 47 ("the Note") issued by the Inland Revenue Department ("IRD"). According to the Note, information covered by LPP will not be exchanged, the general law on LPP will be maintained under the exchange of information regime, and the restriction on disclosure of LPP materials is legally binding on IRD.

5. In the light of the Administration's above explanation, we have no further queries on the issues concerned.

6. According to the Legislative Council ("LegCo") Brief (File Ref.: TsyB R2 00/800-2/1/0(C)) issued by the Financial Services and the Treasury Bureau on 11 July 2018, L.N. 142 is made to fulfil Hong Kong's commitment made in September 2014 to implementing the automatic exchange of financial account information in tax matters ("AEOI") with a view to enhancing tax transparency and combating cross-border tax evasion.

7. According to paragraph 18 of the LegCo Brief, the Administration issued a letter to relevant stakeholders, including financial institutions, regulators, chambers of commerce and professional bodies in April 2017 to update them on the Government's plan to participate in the Convention. In response to LSD's enquiries, the Administration informed us that no objection had been received from the relevant stakeholders.

8. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed by the Administration on the proposal of extending the application of the Convention to Hong Kong at the meetings on 5 June 2017, 8 January 2018 and 3 July 2018. Members did not object to the proposal but raised enquiries on various issues including the need to extend the Convention to Hong Kong, provisions of the Convention which would apply to Hong Kong, and how exchanges of tax information with other jurisdictions would be conducted under the Convention.

9. L.N. 142 came into operation on the day of publication in the Gazette, i.e. 13 July 2018. According to paragraph 11 of the LegCo Brief, the commencement of L.N. 142 on its gazettal date will enable Hong Kong to conduct the first round of AEOI with other jurisdictions, including the Member States of the European Union, by September 2018.

10. Subject to the views of Members on the issues mentioned in paragraph 4 above, no difficulties have been identified in the legal and drafting aspects of L.N. 142.

Prepared by

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3 August 2018



**立法會**  
**Legislative Council**

LC Paper No. LS85/17-18

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

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT  
SUBJECT TO AMENDMENT**

**Tai Lam Tunnel and Yuen Long Approach Road (L.N. 145)  
Ordinance (Amendment of Schedule 1) Notice 2018**

L.N. 145 is made by the Commissioner for Transport ("the Commissioner") under section 45(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) to replace Schedule 1 to Cap. 474 with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Tai Lam Tunnel and Yuen Long Approach Road ("Route 3 (CPS)") with effect from 1 August 2018.

2. Cap. 474 provides for a toll adjustment mechanism for Route 3 (CPS) as follows-
- (a) Route 3 (CPS) Company Limited ("the Franchisee") may, during the franchise period and subject to the relevant requirements stipulated in Cap. 474, apply in writing to the Secretary for Transport and Housing ("the Secretary") to give effect to an anticipated toll increase on each of three specified dates in Schedule 3 (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) (section 39);
  - (b) if the Actual Net Revenue ("ANR") of the Franchisee for any year which is not a year immediately preceding a year in which a specified date occurs is less than the Minimum Estimated Net Revenue ("MENR") for that year as specified in Schedule 4, the Franchisee may apply to the Secretary to give effect to the next anticipated toll increase (section 40);
  - (c) where the Franchisee has given effect to all the anticipated toll increases and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year as specified in Schedule 4, it may apply to the Secretary to give effect to an additional toll increase (section 42);

- (d) the amounts of toll increase to which the Franchisee may give effect in respect of different categories of vehicles are set out in Schedule 2 (section 44(5));
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 45(1)); and
- (f) section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply in respect of any such notice; accordingly, any such notice, including L.N. 145, is not required to be tabled at, and is not subject to amendment by, the Legislative Council ("LegCo") (section 45(3)).

3. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 19/3/5591/91) issued by the Transport and Housing Bureau ("THB") in July 2018, the Franchisee's ANR has, since the commissioning of Route 3 (CPS) in 1998, consistently fallen short of the level of MENR as stipulated in Schedule 4 to Cap. 474. The Franchisee has effected 15 statutory toll increases since the commissioning of Route 3 (CPS). The last statutory toll increase for Route 3 (CPS) came into effect on 1 August 2017.

4. The present increase as reflected in L.N. 145, which was applied by the Franchisee in August 2014, is the 16<sup>th</sup> statutory toll increase. The amounts of increase are in accordance with the amounts stated in Schedule 2 to Cap. 474. According to paragraph 9 of the LegCo Brief, it is based on the Franchisee's audited 2013/14 statement of ANR which shows that the Franchisee's ANR for 2013/14 was \$904 million, which is lower than MENR of \$2,059 million for that year as specified in Schedule 4 to Cap. 474.

5. According to paragraph 11 of the LegCo Brief, the Franchisee will continue to offer concessions to all categories of vehicles so that the current concessionary tolls<sup>1</sup> will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of Route 3 (CPS) will not be affected by the changes in the statutory tolls.

6. A comparison of the Route 3 (CPS) statutory tolls before and after the increase under L.N. 145, and the applicable concessionary tolls, is at **Annex I**.

7. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 145.

8. L.N. 145 came into operation on 1 August 2018.

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<sup>1</sup> The current concessionary tolls took effect from 1 January 2017.

**Western Harbour Crossing Ordinance (Amendment of  
Schedule 1) Notice 2018**

**(L.N. 146)**

9. L.N. 146 is made by the Commissioner under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) to replace Schedule 1 to Cap. 436 with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Western Harbour Crossing ("WHC") with effect from 31 July 2018.

10. Cap. 436 provides for a toll adjustment mechanism for WHC which is similar to that for Route 3 (CPS) as described in paragraph 2 above. The mechanism under Cap. 436 is summarized as follows-

- (a) Western Harbour Tunnel Company Limited ("the Company") may, during the franchise period and subject to the relevant requirements stipulated in Cap. 436, apply in writing to the Secretary to give effect to an anticipated toll increase on each of six specified dates in Schedule 4 (i.e. 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) (section 45);
- (b) where in respect of any year which is not a year ending immediately before a specified date, the net revenue of the Company is less than MENR for that year as stipulated in Schedule 5, the Company may apply to the Secretary to give effect to the next anticipated toll increase (section 46);
- (c) where the Company has given effect to all the anticipated toll increases and its net revenue in respect of any year before the expiry of the franchise period is less than MENR for that year as specified in Schedule 5, the Company may apply to the Secretary to give effect to an additional toll increase (section 48);
- (d) the amounts of toll increase to which the Company may give effect for different categories of vehicles on or after 1 January 2011 are specified in Schedule 3 (section 50);
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 52(1)); and
- (f) section 34 of Cap. 1 does not apply in respect of any such notice; accordingly, any such notice, including L.N. 146, is not required to be tabled at, and is not subject to amendment by, LegCo (section 52(3)).

11. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 1/4651/99) issued by THB in July 2018, the actual net revenue ("ANR") of the Company has, since the commissioning of WHC in 1997, consistently fallen short of the level of MENR as specified in Schedule 5 to Cap. 436. The Company has effected 16 statutory toll increases since the commissioning of WHC. The last statutory toll increase for WHC came into effect on 31 July 2017.

12. The present increase as reflected in L.N. 146, which was applied by the Company in August 2015, is the 17<sup>th</sup> statutory toll increase. The amounts of increase are in accordance with the amounts specified in Schedule 3 to Cap. 436. According to paragraph 9 of the LegCo Brief, it is based on the Company's audited 2014/15 statement of net revenue which shows that the Company's ANR for 2014/15 was \$1,320 million, which is lower than MENR of \$2,733 million for that year as specified in Schedule 5 to Cap. 436.

13. According to paragraph 11 of the LegCo Brief, the Company will continue to offer concessions to all categories of vehicles so that the current concessionary tolls<sup>2</sup> will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of WHC will not be affected by the changes in the statutory tolls.

14. A comparison of the WHC statutory tolls before and after the increase under L.N. 146, and the applicable concessionary tolls, is at **Annex II**.

15. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 146.

16. L.N. 146 came into operation on 31 July 2018.

### **Concluding remarks**

17. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 145 and L.N. 146.

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9 August 2018

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<sup>2</sup> The current concessionary tolls took effect from 27 May 2018.

Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2018	
1.	Motorcycles, motor tricycles	85	90	20
2.	Private cars, electrically powered passenger vehicles, taxis	90	95	44
3.	Public and private light buses	255	270	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	255	270	45
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	95	100	0
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	265	280	50
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	95	100	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	285	300	55
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	95	100	0
7.	Public and private single-decked buses	255	270	130
8.	Public and private double-decked buses	270	285	153

**Annex II**

Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2018	
1.	Motorcycles, motor tricycles	130	140	25
2.	Private cars, electrically powered passenger vehicles	225	240	70
	Taxis	225	240	65
3.	Public and private light buses	270	290	80
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	320	340	80
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	225	240	30
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	490	525	105
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	225	240	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	680	725	135
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	225	240	30
7.	Public and private single-decked buses	270	290	130
8.	Public and private double-decked buses	400	430	185

**立法會**  
**Legislative Council**

LC Paper No. LS86/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 3 August 2018**

**Tabling in LegCo** : Council meeting of 10 October 2018

**Amendment to be made by** : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**Tax Reserve Certificates (Rate of Interest) (Consolidation)  
(Amendment) Notice 2018** **(L.N. 147)**

Under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289A), in relation to tax reserve certificates issued on or after 11 April 1980, the rate of interest is such as may be fixed by the Financial Secretary<sup>1</sup> from time to time and is in force at the date of issue thereof. Under rule 7(2A) of Cap. 289A, notice of the rate of interest so fixed shall be published in the Gazette.

2. L.N. 147 is made by the Secretary for Financial Services and the Treasury under rule 7(2)(h) of Cap. 289A to amend the Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289B) to provide that the rate of interest payable on tax reserve certificates issued on or after 6 August 2018 shall be 0.0767% per annum. The rate of interest was last fixed at 0.0433% per annum in January 2010 pursuant to the Tax Reserve Certificates (Rate of Interest) (No. 6) Notice 2009 (L.N. 264 of 2009) ("the Previous Notice").

3. It is noted that unlike the Previous Notice and other similar previous notices under which the rate of interest payable on tax reserve certificates was prescribed, followed by corresponding amendments to the

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<sup>1</sup> "Financial Secretary" ("FS") is defined under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to mean FS of the Hong Kong Special Administrative Region and the Secretary for Financial Services and the Treasury.

Schedule to Cap. 289B, L.N. 147 only amends the Schedule to Cap. 289B. In response to our enquiry on the reason for adopting a different drafting approach in L.N. 147, the Administration explained that as paragraph 2 of Cap. 289B provides that the rates of interest payable on tax reserve certificates issued at different specified times shall be those contained in the Schedule to Cap. 289B, the amendments of the Schedule to Cap. 289B made by L.N. 147, when read together with paragraph 2 of Cap. 289B, is a sufficient and legally effective way for an exercise of the power under rule 7(2)(h) of Cap. 289A. While we consider that the drafting approach adopted in the previous notices reflects more accurately the provisions in rule 7(2)(h) and rule 7(2A) of Cap. 289A, the drafting approach in L.N. 147 does not appear to give rise to legal difficulties in the light of the Administration's explanation.

4. No Legislative Council Brief has been issued by the Administration on L.N. 147. According to our enquiry made with the Administration, the above rate of interest payable on tax reserve certificates is fixed by reference to the average prevailing interest rate for the six-month time deposit below \$100,000 offered by the three note-issuing banks as at 30 July 2018. Given that the adjustment on the rate of interest payable on tax reserve certificates is a routine exercise, the Administration does not consider it necessary to conduct public consultation.

5. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 147.

6. Subject to Members' view on the issue raised in paragraphs 3 above, no difficulties have been identified in relation to the legal and drafting aspects of L.N. 147.

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22 August 2018



**立法會**  
**Legislative Council**

LC Paper No. LS87/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 10 August 2018**

**Tabling in LegCo** : Council meeting of 10 October 2018

**Amendment to be made by** : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**Electoral Affairs Commission (Electoral Procedure)  
(Legislative Council) (Amendment) Regulation 2018** (L.N. 148)

**Electoral Affairs Commission (Electoral Procedure)  
(District Councils) (Amendment) Regulation 2018** (L.N. 149)

**Electoral Affairs Commission (Electoral Procedure)  
(Election Committee) (Amendment) Regulation 2018** (L.N. 150)

**Electoral Procedure (Chief Executive Election)  
(Amendment) Regulation 2018** (L.N. 151)

**Electoral Procedure (Rural Representative Election)  
(Amendment) Regulation 2018** (L.N. 152)

L.N. 148 to L.N. 152 are made by the Electoral Affairs Commission ("EAC") under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) mainly to amend the list of identity papers stated in the five principal Regulations under Cap. 541 to be inspected by the relevant election officer before the elector is issued a ballot paper. The amendments are summarized below.

2. L.N. 148 to L.N. 151 amend the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F), the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) and the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) respectively to:

- (a) relax the proof of identity document requirement, so that ballot papers may be issued to an elector who has lost his or her identity card etc. if the relevant election officer is satisfied with the elector's identity upon inspecting a memo of lost property and the person's valid passport or similar travel document showing his or her name and photograph. A copy of his or her identity document in paper form showing his or her name, photograph and identity document number would no longer be required;
- (b) set out specific references to the identity papers, e.g. the elector's "identity card" which has the same meaning as in the Registration of Persons Ordinance (Cap. 177), that could be accepted by the relevant election officer in issuing ballot papers to the elector, instead of relying on references to the definitions of "identity document" under the relevant Ordinances, e.g. the Legislative Council Ordinance (Cap. 542); and
- (c) provide for other relevant and textual amendments.

3. L.N. 152 amends the Electoral Procedure (Rural Representative Election) Regulation (Cap. 541L) to:

- (a) similarly relax the proof of identity document requirement as stated in paragraph 2(a) above. The only difference is that reference would continue to be made to "identity document" in Cap. 541L instead of the specific references to the relevant identity papers in Cap. 541D, Cap. 541F, Cap. 541I and Cap. 541J as stated in paragraph 2(b) above.<sup>1</sup> In response to the Legal Service Division's enquiry on the reason for the above difference, the Administration explained that Cap. 541L, as amended by L.N. 152, would continue to reflect the fact that the electors of Indigenous Inhabitant Representative elections in Rural Representative elections may not have Hong Kong identity cards ("HKID"), and the Electoral Registration Officer would accept passport or identity document issued by the relevant authority of other country/territory for the purpose of voter registration, and the electors must produce their HKID or that identity document for collection of ballot papers;<sup>2</sup> and
- (b) provide for other relevant and textual amendments.

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<sup>1</sup> "Identity document" is defined in section 2(1) of the Rural Representative Election Ordinance (Cap. 576) to mean an "identity card" or "any other document issued to a person that is acceptable to the Electoral Registration Officer as proof of the person's identity", whereas an "identity card" means, among others, an identity card issued to a person under Cap. 177.

<sup>2</sup> Please refer to footnote 1 of the Legislative Council Brief (Ref: REO 14-37/5 (Con)) issued by the Registration and Electoral Office in August 2018 for more information.

4. L.N. 148 to L.N. 152 come into operation on 10 December 2018.

5. According to the Legislative Council ("LegCo") Brief (Ref: REO 14-37/5 (Con)) issued by the Registration and Electoral Office in August 2018, L.N. 148 to L.N. 152 are made to introduce the amendments which the Administration has proposed to make in October 2017 ("Administration's Proposed Amendments") to the five amendment regulations (L.N. 129 to L.N. 133 of 2017) made under Cap. 541 concerning proof of an elector's identity before the elector is issued a ballot paper ("the 2017 Regulations") after taking into account the views and suggestions of the subcommittee formed to study the 2017 Regulations ("Subcommittee"). However, the Administration was unable to move a motion to amend the 2017 Regulations as the motion to extend the scrutiny period of the 2017 Regulations could not be dealt with before the expiry of the scrutiny period at the Council meeting of 18 October 2017. According to paragraph 19 of the Report of the Subcommittee (LC Paper No. CB(2)135/17-18), the Administration undertook at the last meeting of the Subcommittee held on 20 October 2017 that it would invite EAC to consider introducing as early as possible another set of subsidiary legislation incorporating the Administration's Proposed Amendments for scrutiny by LegCo as soon as possible. We have compared the Administration's Proposed Amendments with the amendments in L.N. 148 to L.N. 152 and found that they are substantively the same.

6. As advised by the Clerk to the Subcommittee, at the request of the Subcommittee, the Administration undertook to consider proposing amendments to revise one of the alternative measures such that a copy of the elector's Hong Kong identity card in paper form would no longer be required, and to change the reference to "identity document" in the relevant provisions to specific references to the identity papers that could be accepted by the relevant election officer before issuing ballot papers to electors. Members of the Subcommittee generally expressed support for the Administration's Proposed Amendments. However, the Administration was unable to propose the amendments as the scrutiny period of the 2017 Regulations could not be extended.

### **Concluding remarks**

7. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 148 to L.N. 152.

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7 September 2018

**立法會**  
**Legislative Council**

LC Paper No. LS88/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 24 August 2018**

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND  
NOT SUBJECT TO AMENDMENT**

**Volunteer and Naval Volunteer Pensions Ordinance  
(Amendment of Schedules) Order 2018**

**(L.N. 153)**

L.N. 153 is made by the Secretary for Labour and Welfare under section 35(2) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202). It amends Schedules 3 to 8 to Cap. 202 to increase the amounts and monthly rates of the pensions, gratuities and other allowances ("the statutory payment") payable under Cap. 202 in connection with the disablement or death of the officers and volunteers of the Hong Kong Volunteer Defence Corps and members of the Hong Kong Naval Volunteer Force who fought in defence of Hong Kong during the Second World War. Under section 35(2) of Cap. 202, the relevant amounts and monthly rates of the statutory payment are adjusted in accordance with the percentage of increase for the basic pensions declared in a notice made under section 4(1C) of the Pensions (Increase) Ordinance (Cap. 305).

2. By the Declaration of Increase in Pensions Notice 2018 (L.N. 120 of 2018) ("the DIP Notice") gazetted on 22 June 2018 and made under section 4(1C) of Cap. 305, an increase of 2.2% is declared in respect of the basic pensions with effect from 1 April 2018 in accordance with the percentage of increase in the average monthly Consumer Price Index (A) ("Average Index") of the 12 months ending on 31 March 2018 over the Average Index of the immediately preceding 12 months. Accordingly, pursuant to section 35(2) of Cap. 202, the amounts and monthly rates set out in Schedules 3 to 8 to Cap. 202 are adjusted in accordance with the percentage of increase of the basic pensions declared in the DIP Notice (i.e. 2.2%). The relevant amounts and monthly rates were last revised in 2017 by L.N. 147 of 2017.

3. Section 35(4) of Cap. 202 provides that an order made under section 35(2) shall take effect on the same date as specified in the relevant notice made under Cap. 305. As the relevant DIP Notice came into effect on 1 April 2018, L.N. 153 is deemed to have come into operation on 1 April 2018.

4. Section 35(5) of Cap. 202 provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of an order made under section 35(2) of Cap. 202. L.N. 153 is therefore not required to be tabled in the Legislative Council ("LegCo") and is not subject to amendment by LegCo.

5. As advised by the Clerk to the Panel on Welfare Services, the Panel has not been consulted on L.N. 153.

6. According to paragraph 7 of the LegCo Brief issued by the Labour and Welfare Bureau on 22 August 2018 (File Ref: LWB CR 8/3231/92 Pt. 19), the Administration considers that public consultation on L.N. 153 is not necessary as the adjustment of the amounts and monthly rates payable under Cap. 202 is a routine updating exercise.

7. No difficulties have been identified in the legal and drafting aspects of L.N. 153.

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**立法會**  
**Legislative Council**

LC Paper No. LS90/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 31 August 2018**

**Tabling in LegCo** : Council meeting of 10 October 2018

**Amendment to be made by** : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**Guangzhou-Shenzhen-Hong Kong Express Rail Link  
(Co-location) Ordinance (Commencement) Notice** **(L.N. 154)**

By L.N. 154, the Secretary for Transport and Housing ("STH") has appointed 4 September 2018 as the day on which the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632) comes into operation.

2. The Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill ("the Bill") was passed by the Legislative Council ("LegCo") at the Council meeting of 13 June 2018 and the Ordinance was published in the Gazette on 22 June 2018. Cap. 632 implements the co-location arrangement at the West Kowloon Station of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"), pursuant to the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement. The main effect of Cap. 632 is to declare an area as the West Kowloon Station Mainland Port Area ("MPA") and to provide for the application of the laws of the Mainland and of Hong Kong in MPA and the delineation of jurisdiction (including jurisdiction of the courts) over MPA. A Bills Committee was formed to study the Bill. Members may refer to the report of the Bills Committee (LC Paper No. CB(4)1163/17-18) for details.

3. No LegCo brief has been issued by the Administration in relation to L.N. 154. The Legal Service Division has enquired about the necessity for Cap. 632 to come into operation on 4 September 2018 before the actual commissioning of the Hong Kong Section of XRL on 23 September 2018. The Administration explained that Mainland personnel have to conduct final preparatory work at MPA prior to the commissioning of the Hong Kong Section of XRL, for example, to ensure that all requisite materials have been delivered to MPA and to familiarize themselves with

the relevant operational procedures. As such, upon detailed discussion with the Mainland, STH decided to appoint 4 September 2018 as the day on which Cap. 632 would come into operation to dovetail with the commissioning of the Hong Kong Section of XRL in the same month, in order to ensure that MPA could operate smoothly after the commissioning of the Hong Kong Section of XRL.

4. As advised by the Clerk to the Panel on Transport ("the Panel"), the Administration has not formally consulted the Panel on L.N. 154, though the Administration has provided a paper to the Panel for its meeting held on 31 August 2018 (LC Paper No. CB(4)1518/17-18(01)) to inform Panel members of the commencement date of Cap. 632 and the justification for it. The issue of commencement date was discussed at a meeting of the Bills Committee on the Bill (see paragraphs 69 to 71 of the report of the Bills Committee (LC Paper No. CB(4)1163/17-18)). In brief, in response to the Bills Committee members' enquiry on whether the commencement date would tie in with the commissioning date of the Hong Kong Section of XRL, the Administration indicated that it would be necessary for the enacted Ordinance to come into operation in a short period of time before the commissioning of the Hong Kong Section of XRL to allow the Mainland personnel to conduct final preparatory work at MPA so as to ensure that MPA could operate smoothly after its commissioning.

5. No difficulties have been identified in the legal and drafting aspects of L.N. 154.

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**立法會**  
**Legislative Council**

LC Paper No. LS92/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 14 September 2018**

**Tabling in LegCo** : Council meeting of 10 October 2018

**Amendment to be made by** : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order** (L.N. 155)

**Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order** (L.N. 156)

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

2. L.N. 155 and L.N. 156 are made by CE in Council under section 49(1A) of Cap. 112 to give effect to the following Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") respectively:

- (a) the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("HKSARG") and the Government of the Republic of India ("India") for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("India Agreement") signed on 19 March 2018 together with its Protocol; and



- (b) the Agreement between HKSARG and the Government of the Republic of Finland ("Finland") for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("Finland Agreement") signed on 24 May 2018 together with its Protocol.

3. According to paragraph 3 of the Legislative Council ("LegCo") Brief (File Ref: TsyB R2 183/800-1-1/29/0 (C) and TsyB R2 183/800-1-1/37/0 (C)) issued by the Financial Services and the Treasury Bureau on 12 September 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 residents' income derived from Hong Kong. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, CDTAs will enhance the certainty in respect of the elimination of double taxation. Besides, the tax relief provided under CDTAs may exceed the level provided unilaterally by the jurisdictions concerned.

4. For the purposes of section 49(1A) of Cap. 112, L.N. 155 and L.N. 156 declare respectively that the following arrangements 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 the territories concerned, and that it is expedient that those arrangements should have effect:

- (a) arrangements in Articles 1 to 30 of the India Agreement and Paragraphs 1 to 6 of the Protocol to the India Agreement; and
- (b) arrangements in Articles 1 to 29 of the Finland Agreement and Paragraphs 1 to 3 of the Protocol to the Finland Agreement.

5. The provisions in the above Agreements set out the allocation of taxing rights between Hong Kong and the respective jurisdictions and the relief on tax rates on different types of income. Members may refer to the summaries at Annexes D and E of the LegCo Brief for further details.

6. The effects of the declarations referred to in paragraph 4 above are as follows:

- (a) the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment; and
- (b) the arrangements, for the purposes of any provision of those

arrangements that require disclosure of information concerning tax of India and Finland, have effect in relation to any tax of the respective jurisdictions that is the subject of that provision.

7. Each Agreement contains an article on exchange of information which is based on the Organisation for Economic Cooperation and Development ("OECD") 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). While the EoI arrangements under the India Agreement and Finland Agreement are consistent with those under the sample EoI Article in certain aspects (such as requested information must be foreseeably relevant and information received under the CDTA shall be treated as secret), we note that the scope of disclosure and use of information under the two Agreements<sup>1</sup> are different from the sample EoI Article in the following aspects:

- (a) information obtained under these agreements may be used for non-tax related purposes if certain conditions are satisfied;<sup>2</sup>
- (b) information may be disclosed to certain bodies specified in the India Agreement ("specified bodies");<sup>3</sup> and
- (c) there is a duty to disclose information which pre-dates the day on which the India Agreement has effect ("pre-date information") under the said agreement.<sup>4</sup>

8. We have sought clarifications from the Administration on the reasons for the above differences with the sample EoI Article. The Administration's explanation is summarized below:

- (a) It is the Administration's policy that the use of information exchanged for non-tax related purposes should only be allowed when such use is allowed under the laws of both contracting parties and the tax authority of the supplying party authorizes such use. As envisaged by OECD, the sharing of tax information exchanged is only meant for certain high priority matters such as those for combating money laundering, corruption and terrorist financing.

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<sup>1</sup> See Article 26 of the India Agreement and Paragraph 5 of the Protocol to the Agreement, and Article 25 of the Finland Agreement and Paragraph 3 of the Protocol to the Agreement.

<sup>2</sup> See Article 26(2) of the India Agreement and Article 25(2) of the Finland Agreement.

<sup>3</sup> Under Paragraph 5(b) of the Protocol to the India Agreement, these bodies are Parliamentary Committees, the Special Investigation Team constituted by Government and any other oversight bodies mutually agreed upon in writing.

<sup>4</sup> See paragraph 5(c) of the Protocol to the India Agreement.

- (b) Under the laws of Hong Kong, tax information may only be used for limited non-tax related purposes (such as the recovery of proceeds from drug trafficking, organized and serious crimes and terrorist acts). It follows that in reality, information received under the India and Finland Agreements may only be used for the said limited non-tax related purposes if India and Finland also have similar laws permitting the use of tax information for the said non-tax related purposes.
- (c) On every occasion of intended use of tax information for such specified non-tax related purposes, the tax authority of the treaty partners concerned have to seek prior authorization from the Inland Revenue Department ("IRD"). IRD will only indicate consent to treaty partners for such use if such use of information is covered by the current exemption provided under section 58 of the Personal Data (Privacy) Ordinance (Cap. 486) in relation to crimes under the laws of a place outside Hong Kong with which Hong Kong has legal or law enforcement cooperation.
- (d) In relation to disclosure of tax information to oversight bodies of the persons or authorities concerned with the assessment or collection of, the enforcement or prosecution in respect of and the determination of appeals in relation to taxes, the Administration will not allow such disclosure unless there are legitimate reasons given by the treaty partners and, where applicable, such oversight bodies are positively listed in the relevant agreement or its protocol. The oversight bodies concerned are subject to the safeguards which are applicable to the tax authorities for the protection of taxpayers' privacy and confidentiality of the information exchanged. In the case of the India Agreement, the bodies specified therein were added pursuant to India's request so as to fulfil the requirements of its domestic law.
- (e) The provision on exchange of pre-date information was added to the India Agreement upon India's request and after taking into account that such information is foreseeably relevant for a taxable period or taxable event following the date on which the relevant CDTA comes into effect.

9. We have also sought information on other legal aspects of the above agreements, including the funding requirements for an activity to be considered as "substantially supported by public funds" under Article 18 of the India Agreement, an illustration on the operation of the exception as stated in

the anti-abuse provision expressly provided in Article 21 of the Finland Agreement, and the reason for not incorporating similar exceptions in the India Agreement.<sup>5</sup> According to the Administration, public funds should account for more than half of the total funding support for activities to be considered as substantially supported by public funds under Article 18 of the India Agreement. In relation to the above exception in the Finland Agreement, the Administration has explained that the drafting approaches adopted by the Finland Agreement and the India Agreement to prevent fiscal evasion are different and considers it unnecessary to provide a similar exception in the India Agreement.

10. As advised by the Clerk to Panel on Financial Affairs, the Panel has not been consulted on L.N. 155 and L.N. 156.

11. L.N. 155 and L.N. 156 come into operation on 30 November 2018.

### **Concluding Remarks**

12. Subject to Members' views on the matters mentioned in paragraphs 7 to 9 above, no difficulties have been identified in the legal and drafting aspects of L.N. 155 and L.N. 156.

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3 October 2018

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<sup>5</sup> See, for example, Articles 10(6), 11(8), 12(7), 13(7) and 14(7) of the India Agreement.

**立法會**  
**Legislative Council**

LC Paper No. LS93/17-18

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 21 September 2018**

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT  
SUBJECT TO AMENDMENT**

**United Nations Sanctions (ISIL and Al-Qaida) Regulation (L.N. 157)**

L.N. 157 is made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. L.N. 157 came into operation on the day of publication in the Gazette, i.e. 21 September 2018.

2. In view of terrorism posing threat to international peace and security, and the presence, violent extremist ideology and actions of the Islamic State in Iraq and the Levant ("ISIL") and Al-Qaida, the Security Council of the United Nations ("UNSC") adopted Resolution 2368 (2017) ("the Resolution") on 20 July 2017 to impose sanctions of assets freeze, travel ban and arms embargo with respect to ISIL, Al-Qaida, and associated individuals, groups, undertakings and entities.

3. L.N. 157 is made to implement the Resolution. It provides for the prohibition against:

- (a) the supply, sale, transfer or carriage of arms or related materiel to certain persons or entities;
- (b) the provision of technical advice, assistance or training related to military activities in certain circumstances;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (e) entry into or transit through the Hong Kong Special Administrative Region ("HKSAR") by certain persons.

4. The relevant prohibitions apply to any person acting in the HKSAR and any Hong Kong person<sup>1</sup> acting outside the HKSAR. It is an offence for contravention of the relevant prohibition which is punishable on conviction by fine and imprisonment.

5. L.N. 157 also provides for enforcement powers, such as the powers to board, search, enter and detain a ship, aircraft or vehicle by an authorized officer. No expiration date for the relevant prohibitions is provided in L.N. 157. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: CITB CR 75/53/11) on L.N. 157 issued by the Commerce and Economic Development Bureau in September 2018 for further information. A marked-up version showing differences between this Regulation and the United Nations Sanctions (Afghanistan) Regulation 2012, which implements similar sanctions, is at Annex D to the LegCo Brief.

6. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3 of Cap. 537. Accordingly, L.N. 157 is not required to be tabled in the LegCo and is not subject to amendment by LegCo. However, since it comes within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("the Subcommittee"), Members may consider referring L.N. 157 to the Subcommittee for its consideration.

7. As advised by the Clerk to the Subcommittee, the LegCo Brief was circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)1415/17-18 on 21 September 2018.

### **Concluding observations**

8. No difficulties have been identified in the legal and drafting aspects of L.N. 157.

Prepared by

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28 September 2018

LS/S/35/17-18

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<sup>1</sup> Under section 1 of L.N. 157, Hong Kong person (香港人) means –

- (a) a person who is both a Hong Kong permanent resident and a Chinese national; or
- (b) a body incorporated or constituted under the law of the HKSAR.