

立法會
Legislative Council

LC Paper No. LS5/18-19

**Paper for the House Committee Meeting
on 26 October 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 19 October 2018**

Tabling in LegCo : Council meeting of 24 October 2018

Amendment to be made by : Council meeting of 21 November 2018 (or that of 12 December 2018 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION MADE UNDER THE AIR
POLLUTION CONTROL ORDINANCE (CAP. 311)**

**Air Pollution Control (Non-road Mobile Machinery)
(Emission) (Amendment) Regulation 2018 (L.N. 173)**

L.N. 173 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. It amends the Air Pollution Control (Non-road Mobile Machinery) (Emission) (Regulation) (Cap. 311Z) as follows:

- (a) more stringent emission standards will be imposed on the following non-road vehicles¹ with effect from 1 January 2019:
 - (i) private cars;
 - (ii) goods vehicles;
 - (iii) buses having a design weight that exceeds nine tonnes; and

¹ An non-road motor vehicle means a private car, goods vehicle, bus, light bus, motor cycle, motor tricycle or special purpose vehicle that (a) is powered by an internal combustion engine; (b) is not licensed under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E), and (c) is intended to be used exclusively in specified locations, such as the Restricted Area of the airport and construction sites.

- (iv) light buses having a design weight that does not exceed 3.5 tonnes;
- (b) the emission standards for the following classes of non-road vehicles are to be further tightened:
- (i) goods vehicles having a design weight that exceeds 3.5 tonnes and buses having a design weight that exceeds nine tonnes starting from 1 April 2019;
 - (ii) private cars that are equipped with positive-ignition engines starting from 1 September 2019; and
 - (iii) goods vehicles and light buses having a design weight that does not exceed 3.5 tonnes starting from 1 September 2020.
2. A transitional provision is provided in L.N. 173 to the effect that the new emission standards do not apply to non-road vehicles in respect of which applications for approval under section 7(2) of Cap. 311Z have been made before the commencement of L.N. 173.
3. According to paragraph 14 of the Legislative Council ("LegCo") Brief issued by the Environmental Protection Department ("EPD") (without reference number) in October 2018, EPD conducted a briefing session in September 2017 to introduce the proposed amendments and consult the relevant stakeholders on the proposal, including vehicle and regulated machine suppliers, Hong Kong Construction Association, and operators in the airport and container terminals. The vehicle suppliers confirmed that non-road vehicles meeting the relevant emission standards can be supplied to the market in accordance with the proposed timetable for tightening the emission standards. Other operators in general were supportive of the proposed amendment. The Administration also consulted the Advisory Council on the Environment on 5 March 2018 and it supported the proposal.
4. As advised by the Clerk to the Panel on Environmental Affairs, the Administration consulted the Panel at its meeting of 26 March 2018 on the proposal. Members supported the proposal. The Panel also discussed issues including whether there would be incentives or subsidies to promote early replacement of non-road vehicles not meeting the new emission standards, and the Administration's plan to tighten the emission standards for regulated machines.
5. L.N. 173 comes into operation on 1 January 2019 save and except that:

- (a) section 6(11), (12), (13), (14) and (27) (in relation to further tightening of emissions standards applicable to the vehicles as stated in paragraph 1(b)(i) above) comes into operation on 1 April 2019;
- (b) section 6(4), (5) and (6) (in relation to further tightening of emission standards applicable to the vehicles as stated in paragraph 1(b)(ii) above) comes into operation on 1 September 2019; and
- (c) section 6(7), (8), (9), (10), (15), (16), (17), (18), (26) and (28) (in relation to further tightening of emission standards applicable to the vehicles as stated in paragraph 1(b)(iii) above) comes into operation on 1 September 2020.

PART II SUBSIDIARY LEGISLATION RELATING TO IMPLEMENTATION OF MARITIME LABOUR CONVENTION CONCERNING THE WORKING AND LIVING CONDITIONS OF SEAFARERS

| | |
|---|-------------------|
| Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2018 | (L.N. 174) |
| Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (Amendment) Regulation 2018 | (L.N. 175) |
| Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (Commencement) Notice 2018 | (L.N. 176) |
| Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Commencement) Notice | (L.N. 177) |
| Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 178) |
| Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) Regulation 2016 (Commencement) Notice 2018 | (L.N. 179) |
| Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 180) |
| Merchant Shipping (Seafarers) (Crew Accommodation) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 181) |

| | |
|--|-------------------|
| Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 182) |
| Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 183) |
| Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 184) |
| Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 185) |
| Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 186) |
| Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal) Regulation (Commencement) Notice | (L.N. 187) |
| Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Repeal) Regulation (Commencement) Notice | (L.N. 188) |
| Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016 (Commencement) Notice | (L.N. 189) |
| Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016 (Commencement) Notice | (L.N. 190) |

L.N. 174

6. L.N. 174 is made by Secretary for Transport and Housing ("STH") under sections 86, 96, 97, 119 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478) to amend the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF). The principal purpose of L.N. 174 is to require a recruitment and placement agent of seafarers operating in a country that is not a party to the 2006 Maritime Labour Convention ("MLC") to have measures in place to ensure that the seafarers should be given an opportunity to examine and seek advice on their employment agreement before entering into it. This amendment reflects the views of a subcommittee (formed to study various regulations including Cap. 478AF in 2016) as stated in paragraph 17 below. L.N. 174 also amends the definition of "compliance report" in section 2(1) of Cap. 478AF to tally with that of "maritime labour certificate", and makes certain textual amendments.

7. L.N. 174 comes into operation on the day on which it is published in the Gazette, i.e. 19 October 2018.

L.N. 175

8. L.N. 175 is made by STH under sections 119 and 134 of Cap. 478 to amend the Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (L.N. 75 of 2016). The amendments in L.N. 175, which are consequential to the making of the Merchant Shipping (Safety) (Navigational Equipment and Safety of Navigation) Regulation (Cap. 369BA) in 2016, are as follows:

- (a) including the reference to Cap. 369BA in the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478P) as amended by L.N. 75 of 2016; and
- (b) removing the reference to the Merchant Shipping (Safety) (Arrangements for Embarkation and Disembarkation of Pilots) Regulation (Cap. 369AU), which have been repealed following the making of Cap. 369BA.

9. L.N. 175 comes into operation on the day on which it is published in the Gazette, i.e. 19 October 2018.

L.N. 176

10. L.N. 176 is made by STH under section 1(2) of the Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 ("2013 Ordinance") to appoint 20 December 2018 as the day on which uncommenced provisions of the Ordinance (except Subdivisions 3, 4, 6 and 8 of Division 1 of Part 3) come into operation.

11. The Merchant Shipping (Seafarers) (Amendment) Bill 2013 was passed by LegCo on 6 November 2013 and the enacted Ordinance as the 2013 Ordinance was published in the Gazette as Ord. No. 16 of 2013 on 15 November 2013. The 2013 Ordinance amends Cap. 478 to implement certain requirements of MLC;² make technical amendments to improve the operation and presentation of Cap. 478 and provide for related and consequential matters. Certain provisions of the 2013 Ordinance relating to the amendment of the definition of seafarer and the adoption of direct reference approach in making regulations in

² MLC, adopted by the International Labour Organization, provides a comprehensive set of global standards for the working and living conditions of seafarers on seagoing ships to protect the right of all seafarers to decent employment.

future for implementing requirements under international agreements applicable to Hong Kong came into operation on 1 December 2016 (L.N. 152 of 2016).

12. The uncommenced provisions of the 2013 Ordinance which are to be commenced by L.N. 176 (except Subdivisions 3, 4, 6 and 8 of Division 1 of Part 3) relate to seafarers under MLC, including the recruitment and supplying of seafarers by seafarers' organizations, the requirement of written employment agreements between seafarers and shipowners, the right of seafarers to complain to the masters of Hong Kong registered ships and directly to the Superintendent of the Mercantile Marine Office, miscellaneous amendments on the age restrictions of and allotment of wages by seafarers, and related and consequential amendments to various pieces of subsidiary legislation under Cap. 478.

13. The remaining uncommenced provisions (i.e. Subdivisions 3, 4, 6 and 8 of Division 1 of Part 3) relate to amendments to provisions in various pieces of subsidiary legislation under Cap. 478 which have subsequently been repealed after the 2013 Ordinance was enacted in 2013. Upon enquiry by the Legal Service Division, the Administration explained that these remaining uncommenced provisions no longer have any function to serve and are redundant. The Administration would arrange to repeal these provisions in due course.

L.N. 177 to L.N. 190

14. By L.N. 177 to L.N. 190, STH appoints 20 December 2018 as the day on which the following regulations (including an uncommenced provision respectively in items (c) and (n) below) come into operation:

- (a) Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF);
- (b) Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2016 (Cap. 478A) (L.N. 70 of 2016);
- (c) section 4 of the Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) Regulation 2016³ (L.N. 71 of 2016);
- (d) Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 2016 (L.N. 72 of 2016);

³ Section 4 provides that it is the employer's duty to ensure that the health and safety of seafarers and other persons on board a ship is expanded to include the duty to adopt, implement and promote occupational safety and health policies and programmes, and the duty to adopt precautions to prevent occupational accidents, injuries and diseases on board the ship. Other provisions of L.N. 71 of 2016 came into operation on 1 December 2016 (L.N. 153 of 2016).

- (e) Merchant Shipping (Seafarers) (Crew Accommodation) (Amendment) Regulation 2016 (L.N. 73 of 2016);
- (f) Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (L.N. 75 of 2016);
- (g) Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016 (L.N. 76 of 2016);
- (h) Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 (L.N. 77 of 2016);
- (i) Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016 (L.N. 78 of 2016);
- (j) Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment) Regulation 2016 (L.N. 79 of 2016);
- (k) Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal) Regulation (L.N. 80 of 2016);
- (l) Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Repeal) Regulation (L.N. 81 of 2016);
- (m) Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016 (L.N. 82 of 2016); and
- (n) section 3(6) of the Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016 (L.N. 143 of 2016).

15. The regulations set out in paragraph 14(a) to (m) were made to implement the detailed requirements of MLC in relation to the working and living conditions of seafarers on seagoing ships so as to protect the rights of all seafarers to decent employment. These regulations provide for various matters including the major requirements applicable to certain ongoing ships engaged in commercial activities (such as the requirements relating to employment contracts and working conditions, standard of accommodation), allotment of wages of seafarers, employers' duties to ensure the health and safety of seafarers, updating the contents required of official log books, repatriation of seafarers, requirements relating to health and safety protection of seafarers, updating the requirements relating to medicine and medical stores, and prescribing fees for the inspection and certification of ships by the Marine Department.

16. Section 3(6) of L.N. 143 of 2016 referred to in paragraph 14(n) provides that a party aggrieved by the decisions made by the Seafarers' Authority under section 100(2) and (3) of Cap. 478AF may appeal to the Administrative Appeals Board ("AAB"). The other provisions of L.N. 143 of 2016, which provide for appeals to AAB against decisions made by the Seafarers' Authority under various regulations under Cap. 478, already came into operation on 1 December 2016 and 1 January 2017.

17. As advised by the Clerk to the Panel on Economic Development, the Panel was not consulted specifically on L.N. 174 to L.N. 190. A subcommittee was formed in 2016 to scrutinize various regulations set out in paragraph 14(a) to (m) to implement the requirements prescribed by MLC ("the Subcommittee"). The Subcommittee supported the regulations and requested the Administration to make it an express provision in Cap. 478AF that seafarers recruited and placed by an agent to work on board a ship should be given an opportunity to examine and seek advice on their employment agreement before entering into it. The Administration undertook to make the relevant amendment when bringing Cap. 478AF into operation. Members may refer to the report of the Subcommittee (LC Paper No. CB(4)1151/15-16) for further details.

PART III REPLACEMENT OF IDENTITY CARDS

Registration of Persons (Application for New Identity Cards) Order 2018 (L.N. 193)

Registration of Persons (Application for New Identity Cards) Order (Repeal) Order (L.N. 194)

18. L.N. 193 and L.N. 194 are made by the Secretary for Security under section 7B(1) of the Registration of Persons Ordinance (Cap. 177) to underpin the territory-wide identity card replacement exercise which will commence on 27 December 2018.

19. L.N. 193 directs that certain holders of valid identity cards issued before 26 November 2018 or issued on or after that date as a result of applications made before that date ("target identity cards") must apply for new identity cards at specified replacement centres within the periods specified for them.

20. Under L.N. 193, the first category of persons who must apply for new identity cards are members of the Immigration Service, police officers and public officers at the specified ranks of Labour Inspector. Their applications must be made within the period from 27 December 2018 to 30 March 2019.

21. During the period mentioned in paragraph 20 above, the Chief Executive, members of the Executive Council, members of LegCo and principal officials appointed pursuant to nominations under Article 48(5) of the Basic Law may also apply for new identity cards.

22. The next categories of persons who must apply for new identity cards under L.N. 193 are holders of target identity cards which show the following years of birth, and their applications must be made within the following specified periods:

| Year of birth | Specified Period⁴ |
|----------------------|---------------------------------------|
| 1985 or 1986 | From 21 January 2019 to 30 March 2019 |
| 1968 or 1969 | From 1 April 2019 to 1 June 2019 |

23. L.N. 193 also contains special arrangements for applications for new identity cards by the following holders of target identity cards ("the Special Arrangements"):

- (a) a holder of a target identity card showing a year of birth of 1954 or before may, if accompanied by another person who is applying for a new identity card and subject to other specified conditions, apply for a new identity card within the period specified for that other person; and
- (b) a holder of a target identity card who is a resident of a specified residential care home (other than a person residing there as a member of its staff) may also apply for a new identity card at specified mobile offices and registration of persons offices during the specified periods.

24. Under section 7B(3) of Cap. 177, a person who without reasonable excuse fails to apply for identity cards in accordance with L.N. 193 commits an offence and is liable to a fine at level 2 (currently \$5,000).

25. L.N. 194 repeals the Registration of Persons (Application for New Identity Cards) Order (Cap. 177E), which contains the framework of the last replacement of identity cards exercise, in view of the making of L.N. 193.

26. According to paragraph 12 of the LegCo Brief (no reference number) issued by the Security Bureau in October 2018, no public consultation has been conducted by the Administration on L.N. 193 and L.N. 194.

⁴ As to the periods to be specified for other holders of target identity cards to apply for new identity cards, the Administration will, according to paragraph 5 of the relevant LegCo Brief, provide so by amending L.N. 193 as the replacement exercise progresses.

27. As advised by the Clerk to the Panel on Security, the Panel was briefed on 5 December 2017 on the new form of smart Hong Kong identity card and the territory-wide identity card replacement exercise. Members raised no objection to the framework of, and the Special Arrangements in, the replacement exercise. The Panel also discussed issues including the security, design, durability and non-immigration applications of the new smart identity cards.

28. L.N. 193 and L.N. 194 come into operation on 27 December 2018.

PART IV MISCELLANEOUS ITEMS

Pharmacy and Poisons (Amendment) (No. 5) Regulation 2018

(L.N. 191)

29. L.N. 191 is made by the Pharmacy and Poisons Board ("the Board") 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:

- (a) adding 10 items and one sub-item⁵ of drug substances to Division A of Schedule 1 to Cap. 138A and Division A of Schedule 3 to Cap. 138A;
- (b) replacing two existing drug substances with a single one in Division A of Schedule 1 to Cap. 138A and Division A of Schedule 3 to Cap. 138A; and
- (c) adding nine items and one sub-item of drug substances to Division A of Part 1 of the Poisons List set out in Schedule 10 to Cap. 138A ("Poisons List").⁶

30. The effect of L.N. 191 is that the newly added substances are subject to restrictions concerning their sale, supply, labelling and storage, and they 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 those substances in the Poisons List means that they can only be sold

⁵ The 10 items and one sub-item are: (i) Brivaracetam; its salts; (ii) Citicoline; its salts/Citicoline; (iii) Durvalumab; (iv) Emicizumab; (v) Guselkumab; (vi) Inotuzumab ozogamicin; (vii) Methoxyflurane; (viii) Niraparib; its salts; (ix) Voxilaprevir; its salts; and (x) Lignocaine; its salts.

⁶ The difference in item number between subparagraph (a) and (c) is due to the fact that "Lignocaine; its salts", one of the newly added item of drug substance in subparagraph (a), has already been listed as a poison in Part 1 of the Poison List.

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.

31. According to paragraph 5 of LegCo Brief (File Ref.: FHB/H/23/4) issued by the Food and Health Bureau in October 2018, the Board considers the amendments appropriate in view of the potency, toxicity and potential side effects of the substances. Members may refer to Annex B to the LegCo Brief for details of the substances.

32. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 191.

33. L.N. 191 came into operation on the day on which it was published in the Gazette, i.e. 19 October 2018.

Designation of Libraries (Amendment) Order 2018 (L.N. 192)

34. L.N. 192 is made by the Director of Leisure and Cultural Services ("the Director") under section 105K of the Public Health and Municipal Services Ordinance (Cap. 132) to amend the Schedule to the Designation of Libraries Order (Cap. 132O) to:

- (a) cancel the designation of 1 Yung Shue Wan Main Street, Lamma Island as a library ("the old Library");
- (b) designate the first and second floors, 1 Yung Shue Wan Main Street, Lamma Island as a library; and
- (c) designate the building known as Self-service Library Station situated at 2 Tsuen Nam Road, Tai Wai, Sha Tin as a library.

The effect of L.N. 192 is that the management and control of the two newly designated libraries is vested in the Director and the old Library ceases to be a public library.

35. Members may refer to the LegCo Brief (no reference number provided) issued by the Leisure and Cultural Services Department on 16 October 2018 for further information. According to paragraph 10 of the LegCo Brief, the Island District Council and the Sha Tin District Council supported the commissioning of the two new libraries.

36. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 192.

37. L.N. 192 comes into operation on 15 December 2018.

Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements-Banking Sector) Rules (L.N. 195)

38. Financial Institutions (Resolution) Ordinance (Cap. 628), which was enacted in June 2016 and came into operation on 7 July 2017, establishes a regime for the orderly resolution of financial institutions ("FIs") in Hong Kong with systematic importance that are within the scope of Cap. 628 ("within scope FIs")⁷ by resolution authorities ("RAs"), i.e. the Monetary Authority ("MA"), the Insurance Authority and the Securities and Futures Commission. It also confers various powers on RAs for the purposes of the regime, which include the power to apply five stabilization options⁸ for an orderly resolution of non-viable within scope FIs, having regard to the resolution objectives set out in section 8 of Cap. 628. Under section 19 of Cap. 628, RAs may make rules prescribing loss-absorbing capacity ("LAC") requirements for within scope FIs and their group companies to ensure the availability of sufficient LAC to absorb losses of such FIs and contribute to the restoration of their capital position in the event of such FIs ceasing to be viable.

39. As the RA for banking sector entities under Cap. 628, the MA has made L.N. 195 ("the Rules") under section 19 of Cap. 628 to prescribe LAC requirements for authorized institutions ("AIs")⁹ that are within the scope of Cap. 628 and their group companies.

40. The main provisions and key features of the Rules are set out below:

- (a) Part 2 states what types of entity are classifiable entity (i.e. AIs and their holding companies or affiliated operational entities in Hong Kong). Part 2 also empowers the RA to classify a classifiable entity as (a) a resolution entity where a resolution strategy envisages the application of one or more stabilization options to the relevant entity or (b) a material subsidiary if the entity is in a resolution group but is not itself a resolution entity;

⁷ Under section 2(1) of Cap. 628, a "within scope FIs" means a banking sector entity, an insurance sector entity or a securities and futures sector entity.

⁸ Under section 33 of Cap. 628, the five stabilization options that a RA may apply to a within scope FI in resolving the institution are: (a) transfer to a purchaser; (b) transfer to a bridge institution; (c) transfer to an asset management vehicle; (d) bail-in; and (e) transfer to a temporary public ownership company.

⁹ Under section 2(1) of Banking Ordinance (Cap. 155), an authorized institution means a bank, a restricted license bank or a deposit-taking company.

- (b) Part 3 sets out the rules to determine external LAC ratios for a resolution entity and the internal LAC ratios for a material subsidiary. Calculation of LAC for a resolution entity and a material subsidiary is set out in Part 5;
- (c) Part 4 of the Rules establishes the requirements for a resolution entity and material subsidiary to maintain their minimum LAC ratios at all times after the relevant period, which is generally a period of 24 months following their classification as a resolution entity or material subsidiary;
- (d) Part 7 of the Rules imposes obligation on an entity to notify RA of its failure or likely failure to comply with a requirement under the Rules. It also empowers RA to require the entity contravening the Rules to take remedial action. Failure to comply with these requirements under Part 7 of the Rules is an offence under section 19 of Cap. 628;
- (e) Part 8 of the Rules sets out the procedure for the aggrieved entity to apply to the Resolvability Review Tribunal, which is established under Part 7 of Cap. 628, for a review of a reviewable decision made by RA under the Rules; and
- (f) Schedules 1 and 2 to the Rules set out the criteria that must be met by an instrument in order to qualify as an external LAC debt instrument and internal LAC debt instrument respectively for inclusion in a resolution entity's external LAC and a material subsidiary's internal LAC.

41. According to paragraph 4 of the LegCo Brief (File Ref: B&M/2/1/29/4/1C(2018)) dated 16 October 2018 issued by the Financial Services and the Treasury Bureau ("FSTB"), the making of the Rules is necessary in keeping with the development of international guidelines on LAC for banks, in particular the Financial Stability Board's *Principles on Loss-absorbing and Recapitalisation Capacity of global systematically important banks in Resolution and Total Loss-absorbing Capacity Term Sheet*. Furthermore, according to paragraph 3 of the LegCo Brief, the availability of sufficient LAC instruments issued by within scope FIs under the Rules is an essential prerequisite to the effective application of the bail-in stabilization option. LAC can also support the orderly resolution of a non-viable within scope FI where a transfer stabilization option has been applied to move some or all of the assets, rights or liabilities of, or securities issued by, that within scope FI to a transferee, as the LAC instruments could be written down or converted into equity to absorb losses in the non-viable FI and recapitalize such FI or its transferee. Members may refer to the LegCo Brief for further details of the Rules.

42. L.N. 195 comes into operation on 14 December 2018.

43. According to paragraph 31 of the LegCo Brief, the MA has conducted a two-month public consultation from 17 January to 16 March 2018. Submissions were received by the MA from key stakeholders. Most comments received were technical in nature. Further consultation with the industry on the draft text of the Rules has been conducted by FSTB and MA from 25 July to 5 September 2018. According to the Administration, relevant comments received have been addressed.

44. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed on the proposed rules on LAC requirements for AIs to be made as subsidiary legislation under Cap. 628 at the meeting on 3 April 2018. Members were generally supportive of the proposals and enquired about the views received in the public consultation on the legislative proposals.

**Securities and Futures (Financial Resources) (Amendment)
Rules 2018**

(L.N. 196)

45. A licensed corporation ("LC") which conducts one or more types of regulated activities under the Securities and Futures Ordinance (Cap. 571) is required to comply with the financial resources requirements as prescribed in the Securities and Futures (Financial Resources) Rules (Cap. 571N).¹⁰ Under section 6 of Cap. 571N, LC must at all times maintain liquid capital (i.e. the amount by which its liquid assets exceeds its ranking liabilities) which is not less than its required liquid capital.

46. L.N. 196 is made by the Securities and Futures Commission ("SFC") under section 145 of Cap. 571 after consultation with the Financial Secretary to amend Cap. 571N. The main amendments are to clarify or modify certain requirements in relation to the manner in which LC, for the purposes of calculating its liquid capital and required liquid capital, is to account for its assets, liabilities and transactions. These amendments include:

- (a) excluding from LC's ranking liabilities the amount of liability arising from a tenancy agreement entered into by it in respect of any premises which it uses in carrying on the regulated activity concerned, up to the amount of the total value of its assets arising from that tenancy agreement, subject to compliance with the relevant requirements (sections 3(2) to (4) and 30 of L.N. 196);

¹⁰ "Regulated activity" is defined under section 1 of Part 1 of Schedule 1 to Cap. 571 to mean any of the regulated activities specified in Part 1 of Schedule 5 to Cap. 571. Examples of regulated activities are dealing in securities and dealing in futures contracts.

- (b) allowing LC to include in its liquid assets a controlled asset (for example, a currency which is subject to exchange control) that it is able to freely apply to meet its existing obligations or liabilities that are denominated in the same currency as the asset, subject to compliance with the relevant requirements (sections 3(50) and 12 of L.N. 196);
- (c) providing that LC must include in its liquid assets money as held by it on behalf of a client in a specified account which it has received from the client for the purposes of settling a purchase of, or subscription for, securities by it on behalf of the client (section 14 of L.N. 196);
- (d) introducing or revising the haircut percentages applicable to certain securities or investments, such as lowering the haircut percentage for constituent stocks of the Euro Stoxx 50 Index from 20% to 15% (for example, sections 3(17), 4 and 35 of L.N. 196);¹¹ and
- (e) adding to the lists of specified exchanges contained in Schedule 3 to Cap. 571N certain Mainland stock or futures exchanges such as Shanghai Stock Exchange and other stock or futures exchanges such as Taiwan Stock Exchange Corporation (section 36 of L.N. 196).¹²

47. According to paragraph 28 of the LegCo Brief (File Ref: SF&C/1/2/11/6/1C(2017)Pt.3) issued by SFC on 15 October 2018, SFC conducted a public consultation on the proposed amendments to Cap. 571N from July to August 2017 and eight submissions were received. According to SFC, respondents who provided comments generally welcomed and supported the proposals and SFC has taken into account their responses in finalizing the amendments made under L.N. 196.

48. As advised by the Clerk to the Panel on Financial Affairs, at the meeting on 4 June 2018, the Panel was briefed by the Administration and SFC on the proposed amendments to Cap. 571N. Members were generally supportive of the proposals and raised enquiries about the criteria adopted by SFC in adding new futures exchanges and stock exchanges to the list of specified exchanges in Schedule 3 to Cap. 571N and the reasons for introducing haircut percentages for certain types of securities and investments.

¹¹ As stated in footnote 2 of the relevant LegCo Brief, "haircut" is a certain percentage of the market value of securities or other investments to be deducted from the market value as a risk adjustment to cater for market risks of house positions or collateral for the purposes of liquid capital computation. The haircut percentages for different types of securities and investments are contained in Schedule 2 to Cap. 571N.

¹² Cap. 571N prescribes certain treatments for assets and liabilities arising from, or related to, dealings in products traded on those exchanges.

49. Sections 1, 2, 3(2) to (4) and 30 of L.N. 196 (i.e. provisions relating to or containing the amendments described in paragraph 46(a) above) come into operation on 1 January 2019. The other provisions of L.N. 196 come into operation on 1 April 2019.

**Statute Law (Miscellaneous Provisions) Ordinance 2018
(Commencement) Notice**

(L.N. 197)

50. By L.N. 197, the Secretary for Justice ("SJ") appoints 14 December 2018 as the day on which Part 6 of the Statute Law (Miscellaneous Provisions) Ordinance 2018 (Ord. No. 17 of 2018) ("the SL Ordinance 2018") comes into operation.

51. The SL Ordinance 2018 makes miscellaneous amendments to various Ordinances. Part 6 of the SL Ordinance 2018 makes technical amendments to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597). These amendments relate to rectification of an error in the Chinese text of the long title to Cap. 597, and replacements of "recognized Basic People's Court(s)" by "recognized Primary People's Court(s)" and "Basic People's Courts" by "Primary People's Courts" in the English text of Cap. 597 in order to achieve consistency with the English translation of the same terms in the Mainland. The other provisions of the SL Ordinance 2018 came into operation on 20 April 2018 when the Ordinance was published in the Gazette.

52. Before the enactment of the SL Ordinance 2018, a Bills Committee ("SLBC") was formed to scrutinize the Statute Law (Miscellaneous Provisions) Bill 2017 ("the SL Bill 2017"). Members did not raise any issue on Part 6 of the SL Bill 2017 which has been enacted as Part 6 of the SL Ordinance 2018. Members may wish to refer to the report of SLBC (LC Paper No. CB(4)880/17-18) for further information.

53. No LegCo Brief has been issued on L.N. 197. According to our enquiry made with the Department of Justice ("DoJ"), Part 6 of the SL Ordinance 2018 did not come into operation upon the gazettal of the SL Ordinance 2018 on 20 April 2018 as DoJ considers it more efficient to commence Part 6 of the SL Ordinance 2018 and publish a revised list of recognized Primary People's Courts under section 25(1) of Cap. 597 at the same time.

54. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 197.

Concluding Observations

55. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 173 and L.N. 193 to L.N. 196 and will report further, if necessary. No difficulties have been identified in the legal and drafting aspects of L.N. 174 to L.N. 192 and L.N. 197.

Prepared by

CHENG Kiu-fung, Vanessa (L.N. 173 to L.N. 190)

Mark LAM (L.N. 191, L.N. 192 and L.N. 195)

KAN Wan-ye, Wendy (L.N. 193, L.N. 194, L.N. 196 & L.N. 197)

Assistant Legal Advisers

Legislative Council Secretariat

25 October 2018

LS/S/3/18-19