

立法會
Legislative Council

LC Paper No. LS16/18-19

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

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 November 2018**

Tabling in LegCo : Council meeting of 14 November 2018

Amendment to be made by : Council meeting of 12 December 2018 (or that of 9 January 2019 if extended by resolution)

Merchant Shipping (Safety) (INF Cargo) Regulation (L.N. 214)

L.N. 214 is a new regulation made by the Secretary for Transport and Housing under sections 101, 107 and 112B of the Merchant Shipping (Safety) Ordinance (Cap. 369) to implement the requirements of the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships ("INF Code") adopted by the International Maritime Organization ("IMO") in 2001. The INF Code, which has been made mandatory by the IMO under Chapter VII of the International Convention for the Safety of Life at Sea ("SOLAS"), regulates the carriage of packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes carried as cargo ("ING Cargo") by sea.

2. L.N. 214 seeks to implement the INF Code by providing for:
- (a) the requirement for ships to which L.N. 214 applies ("the applicable ships") to be constructed and equipped in accordance with the INF Code in respect of damage stability, fire safety measures, temperature control of cargo spaces, structural consideration, cargo securing arrangements, electrical power supplies and radiological protection;
 - (b) the requirement for the applicable ships to keep on board an ING Cargo Certificate issued by the Director of Marine under Part 3 of L.N. 214 to certify that a specified survey of the ship has been carried out to ensure the compliance with the relevant requirements in the INF Code;

- (c) the requirement for the applicable ships to keep on board a Shipboard Emergency Plan, which must be approved in accordance with the guidelines issued by IMO;
- (d) surveys that are required to be carried out in respect of the applicable ships and the duties of the owners, companies and masters of such ships in respect of such surveys; and
- (e) offences against the owner, company and/or the master of the applicable ships for the contravention of the requirements under L.N. 214¹.

3. According to section 3 of L.N. 214, L.N. 214 applies to two types of ships which are engaged in international voyages, namely, a Hong Kong ship carrying INF Cargo (wherever it may be) and a non-Hong Kong ship carrying INF Cargo within the waters of Hong Kong. It does not apply to (a) a warship or troopship, (b) a naval auxiliary or (c) a ship owned or operated by the Government, or by the government of a country which is a party to SOLAS, and engaged only on governmental non-commercial service.

4. It is noted that the Administration has, pursuant to section 112B of Cap. 369, adopted the direct reference approach in L.N. 214 by referring directly to the INF Code as updated from time to time. According to paragraph 6 the Legislative Council ("LegCo") Brief (File Ref.: THB (T) CR 8/10/80/9) issued by the Transport and Housing Bureau in November 2018, this approach can keep the local legislation up-to-date with the new requirements of the INF Code as far as practicable.

5. According to paragraph 9 of the LegCo Brief, the Administration has consulted the Shipping Consultative Committee of the Marine Department on the proposal in April 2015.

6. As advised by the Clerk to the Panel on Economic Development, the Panel was consulted on the legislative proposal to implement the requirements of the INF Code on 22 January 2018. Members were generally supportive of the proposal. Members also noted from the Administration that currently there is no Hong Kong-registered ship carrying INF Cargo and the usual voyage of such ships does not pass through Hong Kong waters. The proposal is to fulfil Hong Kong's international obligation in case any such ship is registered in Hong Kong or operates through Hong Kong waters in future.

7. L.N. 214 comes into operation on 9 January 2019.

¹ Such owner, company or master of the applicable ships is liable on conviction to a fine at level 4 (i.e. \$25,000) and to imprisonment for two years.

**Employment (Amendment) (No. 3) Ordinance 2018
(Commencement) Notice**

(L.N. 215)

8. By L.N. 215, the Secretary for Labour and Welfare ("the Secretary") appoints 18 January 2019 as the day on which the Employment (Amendment) (No. 3) Ordinance 2018 (Ord. No. 30 of 2018) ("the Amendment Ordinance") comes into operation.

9. The Amendment Ordinance, published in the Gazette on 2 November 2018, amends the Employment Ordinance (Cap. 57) to increase paternity leave entitlement under section 15E of Cap. 57 from three days to five days in respect of a child born on or after the commencement date of the Amendment Ordinance.

10. No LegCo Brief has been issued in respect of L.N. 215.

11. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 215. Before the enactment of the Amendment Ordinance, a Bills Committee was formed to study the Employment (Amendment) Bill 2018. Members noted that the Bill, if passed, would come into operation on a day to be appointed by the Secretary. Members may refer to the report of the Bills Committee on the Bill (LC Paper No. CB(2)2040/17-18) for further details.

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

United Nations Sanctions (South Sudan) Regulation 2018

(L.N. 216)

12. L.N. 216 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. 216 came into operation when it was published in the Gazette on 9 November 2018.

13. In 2015, the Security Council of the United Nations ("UNSC") adopted Resolution 2206 (2015) to impose sanctions against South Sudan. The Resolution has been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (South Sudan) Regulation 2017 (Cap. 537BY), which expired at midnight on 31 May 2018. The UNSC adopted Resolution 2428 (2018) ("the Resolution") on 13 July 2018 to renew the travel and financial sanctions and to impose arms embargo against South Sudan.

14. L.N. 216 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 South Sudan;
- (b) the provision of technical assistance, training or financial or other assistance 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 Hong Kong by certain persons.

15. L.N. 216 will expire at midnight on 31 May 2019.

16. 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. Therefore, L.N. 216 is not required to be tabled in 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 ("Subcommittee"), Members may consider referring L.N. 216 to the Subcommittee for its consideration.

17. As advised by the Clerk to the Subcommittee, the LegCo Brief on L.N. 216 (File Ref: CITB CR 75/53/5/1) issued by the Commerce and Economic Development Bureau in November 2018 was circulated to members of the Subcommittee vide LC Paper No. CB(1)164/18-19 on 12 November 2018. A marked-up version showing the changes made by L.N. 216 to the expired Cap. 537BY is at Annex E to the LegCo Brief.

Concluding observations

18. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 214 and will report further, if necessary. No difficulties have been identified in the legal and drafting aspects of L.N. 215 and L.N. 216.

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