

**立法會**  
**Legislative Council**

LC Paper No. LS20/18-19

**Paper for the House Committee Meeting  
on 23 November 2018**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 16 November 2018**

**Tabling in LegCo** : Council meeting of 21 November 2018

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

**PART I SUBSIDIARY LEGISLATION RELATING TO FEES**

**Mines (Safety) (Amendment) (No. 2) Regulation 2018** (L.N. 217)

**Dangerous Goods (General) (Amendment) (No. 2) Regulation 2018** (L.N. 218)

**Dangerous Goods (Government Explosives Depots) (Amendment) (No. 2) Regulation 2018** (L.N. 219)

At present, 27 items of fees ("Fees") are charged for services ("Services") provided by the Government in respect of mine blasting, manufacture, storage, movement and discharge of dangerous goods, and storage and delivery of explosives. These Fees are set out in the Mines (Safety) Regulations (Cap. 285B), the Dangerous Goods (General) Regulations (Cap. 295B) and the Dangerous Goods (Government Explosives Depots) Regulations (Cap. 295D) made by the Chief Executive ("CE") in Council under section 67 of the Mining Ordinance (Cap. 285) and sections 5 and 13E of the Dangerous Goods Ordinance (Cap. 295).

2. L.N. 217 to L.N. 219 are made by the Secretary for Financial Services and the Treasury ("SFST") under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1)<sup>1</sup> to amend respectively the Third Schedule

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<sup>1</sup> Under sections 3 and 29A of Cap. 1, the amount of any fee or charge specified in, or fixed or determined by, subsidiary legislation made by the Chief Executive in Council may be varied, increased or decreased by similar subsidiary legislation made by the Financial Secretary or the Secretary for Financial Services and the Treasury.

to Cap. 285B, the Table in regulation 183(1) of Cap. 295B and the Schedule to Cap. 295D to adjust 17 items of the Fees ("17 adjusted items") as follows:

- (a) to increase the fee for the issue of mine blasting certificates by 15% (L.N. 217);
- (b) to reduce by 6% and 8% two items of fees relating to the grant or renewal of licences or permits relating to the storage of dangerous goods in category 1 (i.e. explosives and blasting agents), class 6 (ammunition) in a Mode B store (i.e. a store constructed in accordance with regulation 12 of Cap. 295B) and the manufacture of dangerous goods in explosives and blasting agents, and to increase by 9% to 15% five items of fees relating to the grant or renewal of licences or permits relating to the storage or movement of certain dangerous goods in explosives and blasting agents, and the making of alterations or additions to, or endorsements on, those licences or permits and permits relating to the discharge of certain dangerous goods in explosives and blasting agents (L.N. 218); and
- (c) to increase by 10% nine items of fees relating to the storage of explosives and explosive accessories in a Government Explosives Depot and their delivery by the Government from such depot to any other place (L.N. 219).

3. The Fees of the 17 adjusted items were last revised on 31 March 2018. Members may refer to Annex 1 to the Legislative Council ("LegCo") Brief issued by the Development Bureau in November 2018 (with no file reference) for details. According to paragraphs 4 and 5 of the LegCo Brief, the adjustment of the Fees is made after a review of the costs of providing the Services with a view to achieving full cost recovery gradually and to avoiding a steep fee increase. According to the Administration, after the implementation of the fee revision, the cost recovery rates of the Services will range from 77% to 103%.

4. As advised by the Clerk to the Panel on Development, the Panel was briefed by the Administration on the proposed revision of the fees under L.N. 217 to L.N. 219 on 18 July 2018. Members did not object to the proposed fee revision. Given that the fee items were not directly related to people's livelihood, members suggested a bigger fee increase for the relevant items to achieve full cost recovery. The Administration explained that it had adopted a progressive approach to avoid a steep fee increase and to spread out the cost impact on the relevant trades. For the two items to be adjusted downward, members noted that the downward adjustments resulted from the implementation of cost reduction measures.

5. L.N. 217 to L.N. 219 come into operation on 1 February 2019.

**PART II COMMENCEMENT NOTICE AND SUBSIDIARY  
LEGISLATION MADE UNDER THE BANKING  
ORDINANCE (CAP. 155)**

**Banking (Amendment) Ordinance 2018 (Commencement)  
(No. 2) Notice 2018** (L.N. 220)

**Banking (Exposure Limits) Rules** (L.N. 221)

**Banking (Capital) (Amendment) Rules 2018** (L.N. 222)

**Banking (Disclosure) (Amendment) (No. 2) Rules 2018** (L.N. 223)

L.N. 220

6. By L.N. 220, SFST appointed 1 July 2019 as the day on which the uncommenced provisions of the Banking (Amendment) Ordinance 2018 (Ord. No. 6 of 2018) ("the Amendment Ordinance") come into operation.

7. The Amendment Ordinance, which was published in the Gazette on 2 February 2018, amends the Banking Ordinance (Cap. 155) to provide for recovery planning by authorized institutions ("AIs"); to change the limitations on AI's exposures and empower the Monetary Authority ("MA") to make rules for such limitations; and to repeal two items of subsidiary legislation made under Cap. 155, namely the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155O) and the Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007 (Cap. 155P). Prior to the enactment of the Amendment Ordinance, a Bills Committee has been formed to study the Banking (Amendment) Bill 2017. Members may refer to the Report of the Bills Committee (LC Paper No. CB(4)499/17-18) for further information.

8. The uncommenced provisions of the Amendment Ordinance that are brought into operation by L.N. 220 relate mainly to the repeal of the existing provisions on limitations on exposures and interests of AIs under Cap. 155 which will be replaced by those in the Banking (Exposure Limits) Rules (L.N. 221 of 2018) and the repeal of certain transitional provisions. The other provisions of the Amendment Ordinance came into operation on 2 February 2018 (i.e. the day on which the Amendment Ordinance was published in the Gazette) and on 13 July 2018 (i.e. the day appointed by SFST by L.N. 102 of 2018) respectively.<sup>2</sup>

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<sup>2</sup> The provisions of the Amendment Ordinance brought into operation by L.N. 102 of 2018 were reported to the House Committee meeting on 25 May 2018 (LC Paper No. LS61/17-18).

## L.N. 221

9. Section 9 of the Amendment Ordinance adds section 81A to Cap. 155. Section 81A of Cap. 155 provides for, among others, MA's power to make rules prescribing limits on the exposures incurred by an AI after consulting the Financial Secretary and the persons specified in section 81A(2) of Cap. 155, i.e. the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies ("statutory consultees").

10. L.N. 221 is made by MA under section 81A of Cap. 155 after consultation with the Financial Secretary and the statutory consultees to replace the limitations on exposures and interests of AIs under the existing sections 80, 81, 83, 85, 87A and 88 of Cap. 155 by those in L.N. 221. The main provisions of L.N. 221 are summarized below:

- (a) Part 3 – the limit on the acquisition by an AI incorporated in Hong Kong of share capital in a company under the existing section 87A of Cap. 155, subject to certain conditions, does not apply to the acquisition of share capital of a company in the insurance and trading businesses of an AI;
- (b) Part 4 – the limitation on financial facility against the security of an AI's own shares under the existing section 80 of Cap. 155 is extended to the security of certain other capital-in-nature instruments or non-capital loss-absorbing capacity ("LAC") debt instruments;
- (c) Part 6 – a combined, single limit on interests in land (for both self-use and non-self-use) is introduced;
- (d) Part 7 – more detailed provisions on how individual exposures are measured (as compared to the existing section 81 of Cap. 155) are introduced to reflect the large exposures framework promulgated by the Basel Committee on Banking Supervision ("BCBS")<sup>3</sup> in April 2014 which imposes exposure limits on a single counterparty or group of linked counterparties<sup>4</sup>; and

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<sup>3</sup> BCBS, of which Hong Kong is a member, is an international body that sets standards on banking regulation with a view to enhancing financial stability.

<sup>4</sup> Under Rule 41 of L.N. 221, for a counterparty of an AI ("reference counterparty"), another counterparty of the AI is a linked counterparty of the reference counterparty if they are linked through a control or economic interdependence relationship, and the reference counterparty and all of its linked counterparties are collectively treated as a group of linked counterparties of the AI.

- (e) Part 8 – the level of connected party exposure limits under the existing section 83 of Cap. 155 is revised under L.N. 221 to align with the BCBS large exposures framework.

11. According to paragraph 4 of the LegCo Brief (File Ref: B&M/2/1/63C) issued by the Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority ("HKMA") on 14 November 2018, the provisions in L.N. 221 are made to keep pace with market developments and contemporary risk management practices and to implement the large exposures standards promulgated by BCBS in April 2014.

12. L.N. 221 comes into operation on 1 July 2019, i.e. the day on which L.N. 220 comes into operation.

#### L.N. 222

13. L.N. 222 is made by MA under section 97C of Cap. 155 after consultation with the Financial Secretary and the statutory consultees to amend the Banking (Capital) Rules (Cap. 155L).

14. Key features of L.N. 222 include:

- (a) Part 2 – implementing the 2016 BCBS total loss-absorbing capacity holdings standard, which sets out the regulatory capital treatment of banks' holdings of LAC instruments, by amending sections 3E and 3F of Cap. 155L so that an AI must take into account its minimum LAC requirements, in addition to its minimum capital requirements, in determining the amount of distributions it can make, and by amending schedules 4B and 4C to Cap. 155L to incorporate sales and distribution criteria as part of the qualifying criteria of Additional Tier 1 and Tier 2 capital instruments to align with the corresponding LAC debt instrument qualifying criteria under the Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements–Banking Sector) Rules (Cap. 628B)<sup>5</sup>;
- (b) Part 3 – introducing the concept of sovereign concentration risk<sup>6</sup> and including this risk in the parameters for the calculation of the

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<sup>5</sup> Cap. 628B prescribes minimum LAC requirements for AIs and their group companies.

<sup>6</sup> Under section 2 of Cap. 155L, as amended by section 21 of L.N. 222, "sovereign concentration risk", in relation to an AI:

- (a) means the risk of large losses to the institution arising from obligors which are specified sovereign entities of a particular country suddenly failing to meet their credit obligations to the institution or to other creditors of the obligors; and
- (b) includes the risk of other counterparties of the institution failing to meet their credit obligations to the institution as a result of the sudden failure referred to in paragraph (a).

capital adequacy ratio, and making the existing standard on valuation of exposures applicable to sovereign concentration risk;

- (c) Part 4 – incorporating in the existing securitization framework the "internal assessment approach" ("IAA") of the 2014 BCBS Revisions to the securitization framework by prescribing the requirements related to AI's application to MA for approval to use IAA and the measures that may be taken by MA if the AI using IAA no longer satisfies specified requirements, and specifying the manner in which internal credit ratings assigned by an AI to securitization exposures to an asset-backed commercial paper programme are mapped to the corresponding risk-weights under the IAA; and
- (d) Part 1 of Schedule 1 – specifying HKMC Insurance Limited and HKMC Annuity Limited as domestic public sector entities with the effect that they are eligible for preferential capital treatment under Cap. 155L.

15. Part 4 (except section 34<sup>7</sup>), and sections 15 and 16<sup>8</sup> of L.N. 222 come into operation on 11 January 2019; Part 2 (except sections 15 and 16) of L.N. 222 comes into operation on 1 April 2019; and Part 3 and section 34 of L.N. 222 in relation to concentration risk in sovereign exposures come into operation on 1 July 2019.

#### L.N. 223

16. L.N. 223 is made by MA under section 60A of Cap. 155 after consultation with the Financial Secretary and the statutory consultees to update the definition of "capital requirements" under section 2 of the Banking (Disclosure) Rules (Cap. 155M).

17. The effect of L.N. 223 is that certain disclosure requirements imposed on AIs under Cap. 155M are extended to cover the capital treatment in relation to concentration risk in sovereign exposures.

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<sup>7</sup> Section 34 of L.N. 222 amends section 64 of Cap. 155L to repeal the reference to section 81(1)(a), (b), (c) or (d) of Cap. 155 and substitute the reference to the Banking (Exposure Limits) Rules.

<sup>8</sup> Sections 15 and 16 of L.N. 222 amends schedules 4B and 4C to Cap. 155L to align with the corresponding LAC debt instrument qualifying criteria under Cap. 628B.

18. According to the LegCo Brief (File Ref: B&M/2/1/63C), the purpose of the amendment in L.N. 223 is to align with the provisions in Part 3 of L.N. 222 for implementing the BCBS large exposures framework.

19. L.N. 223 comes into operation on 1 July 2019, i.e. the day on which Part 3 of L.N. 222 in relation to sovereign concentration risk comes into operation.

### Consultation

20. According to paragraph 16 of the LegCo Brief (File Ref: B&M/2/1/63C), HKMA has engaged the banking industry in formulating the policy proposals contained in L.N. 221 and L.N. 222 through a series of consultations in 2018. Pursuant to sections 60A, 81A and 97C of Cap. 155, statutory consultations were conducted on the draft provisions in L.N. 221, L.N. 222 and L.N. 223 in October 2018. HKMA has taken into consideration comments received from the statutory consultees and made adjustments as appropriate.

21. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 220. In respect of L.N. 221, L.N. 222 and L.N. 223, when the Panel was briefed on the work of HKMA at the Panel meetings on 5 February 2018, 15 May 2018 and 5 November 2018, members were informed of the background to and HKMA's plan to make those rules. No members raised questions on the matter at the above meetings.

## **PART III SUBSIDIARY LEGISLATION MADE UNDER THE ANTIQUITIES AND MONUMENTS ORDINANCE (CAP. 53)**

### **Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment)**

**Notice 2018**

**(L.N. 224)**

22. L.N. 224 is made by the Secretary for Development under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) after consultation with the Antiquities Advisory Board ("AA Board") and with the approval of CE. It declares the exterior structures of the following buildings of The University of Hong Kong ("HKU") at Pok Fu Lam to be historical buildings for the purposes of Cap. 53 by adding them to paragraph 3 of the Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice (Cap. 53B):

- (a) Fung Ping Shan Building;
- (b) Eliot Hall; and
- (c) May Hall.

23. As historical building is one type of "monument" as defined in section 2 of Cap. 53, the effect of L.N. 224 is that the exterior structures of the above three buildings become monuments under Cap. 53. Under section 6(1) of Cap. 53, carrying out excavation, building or other works and demolition of the exterior structures of monuments are prohibited except in accordance with a permit granted by the Secretary for Development. Under section 19(2) of Cap. 53, any person who contravenes section 6(1) of Cap. 53 shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000 and imprisonment for one year.

24. According to paragraph 12 of the LegCo Brief (File Ref: DEVB/CHO/1B/CR 141) issued by the Development Bureau on 15 November 2018, the three buildings concerned have been accorded with Grade 1 status (which denotes buildings of outstanding merit) by the AA Board under the existing administrative grading mechanism. Paragraph 13 of the LegCo Brief states that as the three buildings are situated on the private lands under the ownership of HKU, the Administration has obtained the explicit agreement of the owner of the buildings to the declaration proposal.

25. In response to the Legal Service Division's enquiries, the Administration stated that the interior structures of the three buildings concerned have been accorded with Grade 1 status by the AA Board. Even though the interior structures of the three buildings are not covered by L.N. 224, they will be protected by administrative measures. As agreed between the Administration and HKU, HKU will inform and consult the Antiquities and Monuments Office before any alteration is made to the interior structures of the three buildings.

26. As advised by the Clerk to the Panel on Development, the Administration has not briefed the Panel on L.N. 224.

27. L.N. 224 came into operation on the date of publication in the Gazette, i.e. 16 November 2018.

## **Concluding observations**

28. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 221 and L.N. 222 and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of the other items of subsidiary legislation.

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