

立法會
Legislative Council

LC Paper No. LS22/18-19

**Paper for the House Committee Meeting
on 30 November 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 23 November 2018**

Tabling in LegCo : Council meeting of 28 November 2018

Amendment to be made by : Council meeting of 12 December 2018 (or that of 16 January 2019 if extended by resolution)

Pharmacy and Poisons (Amendment) (No. 7) Regulation 2018 (L.N. 228)

L.N. 228 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. Apalutamide; 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").

2. The effect of L.N. 228 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.

3. According to paragraph 4 of the Legislative Council ("LegCo") Brief (File Ref.: FHB/H/23/4) issued by the Food and Health Bureau in November 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.

4. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 228.

5. L.N. 228 came into operation on the date of publication in the Gazette, i.e. 23 November 2018.

**Telecommunications (Carrier Licences) (Amendment)
Regulation 2018**

(L.N. 229)

6. L.N. 229 is made by the Secretary for Commerce and Economic Development ("SCED") under section 7(2) of the Telecommunications Ordinance (Cap. 106) to amend Part 6 of Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V) to:

- (a) reduce one of the components of the annual licence fee for a unified carrier licence ("UCL"), namely the customer connection fee, from \$700 to \$500, in respect of each 100 customer connections to the telecommunications network established and maintained by the licensee to provide fixed and mobile telecommunications services; and
- (b) introduce a new fee component of \$200 under UCL for each 100 Wireless Internet of Things ("WIoT") devices connected by radiocommunications means to the network established and maintained by the licensee.

7. According to paragraph 4 of the LegCo Brief (File Ref: 480-020-008-001-008 C) issued by the Commerce and Economic Development Bureau dated 21 November 2018, which referred to the Joint Statement of SCED and the Communications Authority ("CA") dated 12 October 2018 (Annex to LC Paper No. CB(4)162/18-19(05)) ("Joint Statement"), there are altogether six fee proposals relating to licences issued under Cap. 106, following a licence fee review conducted by SCED and CA. L.N. 229 implements two of the proposals as described in paragraph 6(a) and (b) above, while legislative amendment is not required to effect reduction in fees for the other four types of licences.¹

8. According to paragraphs 7 to 9 of the Joint Statement, the licence fee review is in line with the cost recovery principle and financial arrangements as advised by the Financial Services and the Treasury Bureau. The Administration has also taken into account the Court of Final Appeal ("CFA")'s decision² in connection with judicial review proceedings brought by several telecommunications companies against SCED and CA regarding the 2011-2012 licence fee review. The CFA held that Cap. 106 did not authorize recovery in excess of cost by prescribing a licence fee which included an element of what in substance was a tax upon the licensee.

¹ The other four types of licences are public radiocommunications service licences (radio paging), services-based operator licences (mobile virtual network operators), mobile radio system mobile station licences, and private mobile radio system licences.

² See *PCCW-HKT Telephone Limited v Secretary for Commerce and Economic Development* (2017) 20 HKCFAR 592.

9. According to paragraph 10 of the LegCo Brief, SCED and CA jointly launched a public consultation from 8 June to 6 August 2018 in respect of the proposed fee reduction for five types of licences issued under Cap. 106 and the introduction of a new fee for WIoT devices. A total of seven submissions were received. While the respondents were generally supportive of the initiative to reduce licence fees and to introduce a new fee component for WIoT services, they have also expressed further views and comments. These comments and the Administration's responses have been set out in the Joint Statement.

10. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Panel was briefed on the reduction of five types of licence fees and the introduction of the new WIoT device fee at its meeting on 12 November 2018. While Panel members have no objection to the proposals, some members asked the Administration to consider further reducing the WIoT device fee and simplifying the regulatory process.

11. L.N. 229 comes into operation on 31 January 2019.

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

Prepared by

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