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**Legislative Council**

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**Paper for the House Committee Meeting  
on 14 December 2018**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 7 December 2018**

**Tabling in LegCo** : Council meeting of 12 December 2018

**Amendment to be made by** : Council meeting of 9 January 2019 (or that of 30 January 2019 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION RELATING TO FEES**

**Dutiable Commodities (Amendment) Regulation 2018** (L.N. 241)

**Firearms and Ammunition (Amendment) Regulation 2018** (L.N. 242)

**Firearms and Ammunition (Storage Fees) (Amendment) Order 2018** (L.N. 243)

**Pawnbrokers (Amendment) Regulation 2018** (L.N. 244)

**Massage Establishments (Amendment) Regulation 2018** (L.N. 245)

L.N. 241 to L.N. 245 are made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1)<sup>1</sup> (L.N. 241, L.N. 242, L.N. 244 and L.N. 245) and section 46(2) of the Firearms and Ammunition Ordinance (Cap. 238) (L.N. 243) respectively to revise certain fees as follows:

- (a) by increasing the fee payable for a temporary liquor licence under the Dutiable Commodities Regulations (Cap. 109A) by 15% from \$510 to \$585 (L.N. 241);

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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.

- (b) by increasing by 10% to 52% nine items of fees under the Firearms and Ammunition Regulations (Cap. 238A) for the grant of exemption to a person holding a licence for possessing arms and ammunition, the issue or renewal of a licence for possession or a dealer's licence, the amendment of a licence or condition of a licence, and the replacement of a licence or an exemption (L.N. 242);
- (c) by increasing by 16% to 17% four items of fees payable under the Firearms and Ammunition (Storage Fees) Order (Cap. 238B) for the storage of arms, the storage of imitation firearms, the storage of ammunition, and the storage of arms and ammunition awaiting transshipment (L.N. 243);
- (d) by increasing by 10% the fee payable for the grant or renewal of a licence to a person to carry on business as a pawnbroker under the Pawnbrokers Regulations (Cap. 166A) (from \$4,610 to \$5,070) (L.N. 244); and
- (e) by increasing by 15% the fees payable for the issue or renewal of a licence to operate a massage establishment under the Massage Establishments Regulations (Cap. 266A) (L.N. 245).

2. The above fees were last increased on 1 November 2014. Members may refer to Annex G to the Legislative Council ("LegCo") Brief (File Ref: SBCR 1/4/2801/85) issued by the Security Bureau in December 2018 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 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 26% to 88%.

3. According to the Clerk to the Panel on Security, an information paper provided by the Administration entitled "Proposed revision of fees for services under the purview of the Hong Kong Police Force" was circulated to members of the Panel and all non-Panel members vide LC Paper No. CB(2) 150/18-19(01) on 26 October 2018. No member requested to discuss the fee revision proposals at a Panel meeting.

4. L.N. 241 to L.N. 245 come into operation on 1 February 2019.

**PART II SUBSIDIARY LEGISLATION RELATING TO IMPLEMENTATION OF LATEST REQUIREMENTS OF INTERNATIONAL CONVENTIONS CONCERNING CARRIAGE OF DANGEROUS GOODS AND MARINE POLLUTANTS**

**Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) (Amendment) Regulation 2018 (L.N. 246)**

**Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2018 (L.N. 247)**

L.N. 246

5. L.N. 246 is made by the Secretary for Transport and Housing ("STH") under sections 101, 107 and 112B of the Merchant Shipping (Safety) Ordinance (Cap. 369) and sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). It amends the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation (Cap. 413H) to incorporate the latest requirements of Chapter VII of the Annex to the International Convention for the Safety of Life at Sea, 1974 ("SOLAS"),<sup>2</sup> the International Maritime Dangerous Goods Code ("IMDG Code")<sup>3</sup> and Annex III to the International Convention for the Prevention of Pollution from Ships, 1973 ("MARPOL")<sup>4</sup> of the International Maritime Organization ("IMO") in relation to the carriage of dangerous goods and marine pollutants.

6. The major amendments made by L.N. 246 include:

- (a) amending Parts I, II, III, IV and V of Cap. 413H to reflect the latest requirements of Annex III to MARPOL and Chapter VII of the Annex to SOLAS on carriage of dangerous goods and marine pollutants;
- (b) adding a new Part IIIA to Cap. 413H to provide separately for carriage of marine pollutants in packaged form which comprises requirements for documentation, packing, marking, labelling, stowage, prohibition of carrying and limit on quantity, jettisoning and washing of leakages of marine pollutants etc.;

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<sup>2</sup> Chapter VII of the Annex to SOLAS provides an international standard for the carriage and safe transportation of dangerous goods for ocean-going vessels.

<sup>3</sup> IMDG Code classifies different types of dangerous goods including marine pollutants into various classes, and sets out the requirements on packing, labelling, stowage and documentation in respect of the different classes of dangerous goods.

<sup>4</sup> Annex III to MARPOL provides regulations for the prevention of pollution by harmful substances carried by sea in packaged form.

- (c) introducing requirements concerning stowage and segregation, document of compliance and reporting incidents in relation to dangerous goods in solid form in bulk and the related offences; and
- (d) adding a new Part IVA to Cap. 413H to provide for powers of the Director of Marine and authorized officers to inspect, examine etc. ships and the related offences.

#### L.N. 247

7. L.N. 247 is made by STH under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) to consequentially amend the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F). It provides that certain requirements of Annex III to MARPOL (on documentation and plans, packing, marking and labelling, stowage of dangerous goods in packaged form etc. and carriage of explosives) in respect of carriage of dangerous goods in packaged form and explosives apply to local vessels, and provides for the related offences for contravention of such requirements.

#### L.N. 246 and L.N. 247

8. It is noted that the Administration has, pursuant to section 3A of Cap. 413, adopted the direct reference approach in L.N. 246 and L.N. 247 by referring directly to Chapter VII of the Annex to SOLAS, IMDG Code and Annex III to MARPOL, as revised or amended from time to time. According to paragraph 7 of the LegCo Brief (File Ref: THB(T) PML CR 8/10/90/3/1) issued by the Transport and Housing Bureau ("THB") in December 2018, this approach can keep the local legislation up-to-date as far as practicable.

9. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 22 January 2018 on the legislative proposal to implement the latest requirements of IMO in relation to the carriage of dangerous goods and marine pollutants. Members were generally supportive of the proposal. Issues on application of the new requirements were discussed.

10. L.N. 246 and L.N. 247 come into operation on 1 March 2019.

**PART III SUBSIDIARY LEGISLATION RELATING TO  
IMPLEMENTATION OF THE INTERNATIONAL  
CONVENTION FOR THE SAFETY OF LIFE AT SEA OF  
THE INTERNATIONAL MARITIME ORGANIZATION**

**Merchant Shipping (Safety) (Construction and Survey)  
Regulation (L.N. 248)**

**Merchant Shipping (Safety) (Fire-fighting Appliances and  
Fire Protection) Regulation (L.N. 249)**

**Merchant Shipping (Safety) (Cargo Ship Construction and  
Survey) (Ships Built Before 1 September 1984)  
(Amendment) Regulation 2018 (L.N. 250)**

**Merchant Shipping (Safety) (Cargo Ship Construction and  
Survey) (Ships Built On or After 1 September 1984)  
(Amendment) (No. 2) Regulation 2018 (L.N. 251)**

**Merchant Shipping (Safety) (Fire Protection) (Ships Built  
Before 25 May 1980) (Amendment) Regulation 2018 (L.N. 252)**

**Merchant Shipping (Safety) (Fire Appliances) (Ships Built  
On or After 25 May 1980 but Before 1 September 1984)  
(Amendment) Regulation 2018 (L.N. 253)**

**Merchant Shipping (Safety) (Fire Protection) (Ships Built  
On or After 1 September 1984) (Amendment) Regulation  
2018 (L.N. 254)**

**Merchant Shipping (Safety) (Passenger Ship Construction)  
(Ships Built Before 1 September 1984) (Amendment)  
(No. 2) Regulation 2018 (L.N. 255)**

**Merchant Shipping (Safety) (Passenger Ship Construction  
and Survey) (Ships Built On or After 1 September 1984)  
(Amendment) (No. 2) Regulation 2018 (L.N. 256)**

**Merchant Shipping (Safety) (Cargo Ship Safety Equipment  
Survey) (Amendment) Regulation 2018 (L.N. 257)**

**Merchant Shipping (Safety) (Subdivision and Damage  
Stability of Cargo Ships) (Amendment) (No. 2) Regulation  
2018 (L.N. 258)**

11. L.N. 248 to L.N. 258 are made by STH under various sections of Cap. 369 to implement the latest requirements of the relevant parts of SOLAS of IMO and to make related, textual and consequential amendments. In gist:

- (a) L.N. 248 is a new regulation which gives effect to Chapters I, II-1, V, XI-1 and XII of the Annex to SOLAS providing for the requirements regarding, among others, the construction, structure, safety operation, installations and surveys of specified ocean-going vessels ("OGVs"). The requirements include regulating the use of low-flashpoint fuel by certain OGVs and imposing duties to keep as-built construction drawings and plans of the OGV concerned on board by the owner and the master of the OGV and on shore by the owner of the OGV. Non-compliance with a relevant requirement under L.N. 248 is either an offence under section 94 of Cap. 369 ("Passenger Ship Construction Offence")<sup>5</sup>, or an offence under a relevant section of L.N. 248 which is punishable by a fine at level 3 (currently \$10,000);
- (b) L.N. 249 is a new regulation which gives effect to the requirements on fire protection, fire detection and fire extinction provided in Chapter II-2 of the Annex to SOLAS on specified OGVs. It prescribes, among others, the requirements relating to the prevention of fire and explosion, and the provision of emergency escape breathing devices of specified OGVs. Non-compliance with a relevant requirement under L.N. 249 is either an offence under section 44 of Cap. 369 ("Fire-Fighting Appliances Offence")<sup>6</sup>, or an offence under a relevant section of L.N. 249 which is punishable by a fine at level 4 (currently \$25,000) and an imprisonment for two years;
- (c) L.N. 250 and L.N. 251 amend the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) Regulations (Cap. 369R) and the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369S) mainly to implement the requirements of Chapters II-1 and II-2 of the Annex to SOLAS in relation to the construction or installations of specified cargo ships constructed before 1 September 1984 and those built on or after that date and before 1 July 2002 respectively,

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<sup>5</sup> The owner or master of the vessel concerned who is convicted of a Passenger Ship Construction Offence is liable to a fine of \$10,000 (i.e. level 3).

<sup>6</sup> The owner of the vessel concerned who is convicted of a Fire-Fighting Appliances Offence is liable to a fine of \$50,000 and to imprisonment for two years. The master of the vessel concerned who is convicted of such an offence is liable to a fine of \$10,000 and to imprisonment for six months.

such as the requirements on oil fuel arrangements. Each of these two items of subsidiary legislation also creates new offences for the new requirements added by each of them and revises the penalties prescribed for the current offences under Cap. 369R or Cap. 369S to the effect that a person who is convicted of any of these new or current offences is punishable by a fine at level 3;

- (d) L.N. 252 amends the Merchant Shipping (Safety) (Fire Protection) (Ships Built Before 25 May 1980) Regulations (Cap. 369W) to replace the references to repealed subsidiary legislation made under Cap. 369 with the relevant provisions of the IMDG Code adopted by IMO. It also revises the current offence provision under Cap. 369W to the effect that non-compliance with a relevant requirement under Cap. 369W is either a Fire-Fighting Appliances Offence, or an offence under the new regulation 75 of Cap. 369W which is punishable by a fine at level 4 and an imprisonment for two years;
- (e) L.N. 253 amends the Merchant Shipping (Safety) (Fire Appliances) (Ships Built On or After 25 May 1980 but Before 1 September 1984) Regulations (Cap. 369X) to update the definition of "dangerous goods", replace the reference to repealed subsidiary legislation made under Cap. 369 with the relevant provision of the IMDG Code, and make other textual amendments. It also revises the existing offence provision under Cap. 369X so that non-compliance with a relevant requirement under Cap. 369X is either a Fire-Fighting Appliances Offence, or an offence under the new regulation 77 of Cap. 369X which is punishable by a fine at level 4 and an imprisonment for two years;
- (f) L.N. 254 amends the Merchant Shipping (Safety) (Fire Protection) (Ships Built On or After 1 September 1984) Regulations (Cap. 369Y) mainly to implement the requirements of Chapter II-2 of the Annex to SOLAS regarding fire prevention, fire appliances and structural fire protection for specified ships built on or after 1 September 1984 and before 1 July 2002. It also creates new offences for the new requirements added by L.N. 254 and revises the existing offence provision under Cap. 369Y to the effect that non-compliance with a relevant requirement under Cap. 369Y is either a Fire-Fighting Appliances Offence, or an offence under the new regulation 146 of Cap. 369Y which is punishable by a fine at level 4 and an imprisonment for two years;

- (g) L.N. 255 and L.N. 256 amend the Merchant Shipping (Safety) (Passenger Ship Construction) (Ships Built Before 1 September 1984) Regulations (Cap. 369AL) and the Merchant Shipping (Safety) (Passenger Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369AM) mainly to implement the requirements of Chapters II-1 and II-2 of the Annex to SOLAS in relation to the construction, installations or operation of specified passenger ships constructed or converted before 1 September 1984 and those constructed or converted on or after that date and before 1 July 2002 respectively. Each of these two items of subsidiary legislation also provides for new offences for the new requirements added by each of them and revises the current offence provision under Cap. 369AL or Cap. 369AM, with the result that non-compliance with a relevant requirement under Cap. 369AL or Cap. 369AM is either a Passenger Ship Construction Offence, or an offence under the relevant new regulation under Cap. 369AL or Cap. 369AM which is punishable by a fine at level 3;
- (h) L.N. 257 amends the definition of "Safety Regulations" under regulation 2 of the Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) Regulations (Cap. 369T) to include L.N. 249 in view of the making of L.N. 249; and
- (i) L.N. 258 amends the Merchant Shipping (Safety) (Subdivision and Damage Stability of Cargo Ships) Regulation (Cap. 369AT) to provide that Cap. 369AT does not apply to specified cargo ships constructed on or after 1 January 2009. It also revises the penalties applicable to the existing offences under Cap. 369AT such that a person who is convicted of any of the existing offences is liable to a fine at level 3.

12. It is noted that the Administration has adopted an approach of making direct reference to the requirements of SOLAS including the relevant codes adopted by IMO or its committee such as the IMDG Code in L.N. 248 to L.N. 256 pursuant to section 112B of Cap. 369. According to paragraph 10 of LegCo Brief (File Ref.: THB (T) PML CR8/10/80/13) issued by THB in December 2018, this approach is adopted to allow the local legislation to be up-to-date as far as practicable with the new requirements of SOLAS.

13. According to paragraph 13 of the LegCo Brief, the Administration consulted the Shipping Consultative Committee of the Marine Department in April 2017 and its members raised no objection to the proposals.



14. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 26 March 2018 on the legislative proposals to implement the latest requirements of SOLAS in relation to the construction and survey, and fire safety requirements of ships. Members were generally supportive of the proposals. Issues on enforcement of the new requirements were also discussed.

15. L.N. 248 to L.N. 258 come into operation on 1 March 2019.

## **PART IV MISCELLANEOUS**

### **Securities and Futures (OTC Derivative Transactions— Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018 (L.N. 259)**

16. Under rule 6 of the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571AN), a prescribed person<sup>7</sup> must clear a specified OTC derivative transaction<sup>8</sup> (through a central counterparty) if the transaction is entered into on or after the prescribed day for the first calculation period in respect of which the person reached the clearing threshold. A prescribed person reaches the clearing threshold if the average total position of the person for a calculation period equals or exceeds the clearing threshold specified in Schedule 2 to Cap. 571AN for the calculation period. Currently, there are four calculation periods specified in Schedule 2 to Cap. 571AN, each with its corresponding prescribed day, and the clearing threshold is set at US\$20 billion for all calculation periods. A prescribed person is also required to keep records of a specified OTC derivative transaction under rule 12 of Cap. 571AN.

17. L.N. 259 is made by the Securities and Futures Commission ("SFC") under sections 101N and 101P of the Securities and Futures Ordinance (Cap. 571) with the consent of the Monetary Authority and after consultation with the Financial Secretary. It amends Schedule 2 to Cap. 571AN by adding eight calculation periods and their respective clearing thresholds and prescribed days for the purposes of the above clearing and record keeping obligations as follows:

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<sup>7</sup> Under section 101A of the Securities and Futures Ordinance (Cap. 571), a prescribed person, in relation to the clearing obligation, means (i) an authorized financial institution; (ii) an approved money broker; (iii) a licensed corporation; or (iv) a person of a class or description specified in the clearing rules as being subject to the clearing obligation.

<sup>8</sup> A specified OTC derivative transaction refers to a basis swap, fixed-to-floating swap (except an overnight index swap) or overnight index swap which has the features set out in Table 1, 2 or 3 of Schedule 1 to Cap. 571AN.

Calculation period	Clearing threshold	Prescribed day
1 March 2019 to 31 May 2019	US\$20 billion	1 January 2020
1 September 2019 to 30 November 2019	US\$20 billion	1 July 2020
1 March 2020 to 31 May 2020	US\$20 billion	1 January 2021
1 September 2020 to 30 November 2020	US\$20 billion	1 July 2021
1 March 2021 to 31 May 2021	US\$20 billion	1 January 2022
1 September 2021 to 30 November 2021	US\$20 billion	1 July 2022
1 March 2022 to 31 May 2022	US\$20 billion	1 January 2023
1 September 2022 to 30 November 2022	US\$20 billion	1 July 2023

18. According to paragraph 10 of the LegCo Brief (File Ref: SF&C/1/2/11/6/1C(2017)Pt.4) issued by the Financial Services and the Treasury Bureau, Hong Kong Monetary Authority ("HKMA") and SFC on 5 December 2018, SFC and HKMA jointly consulted the market on, among other things, the proposed amendments to Cap. 571AN between March and April 2018, and issued a consultation conclusions paper in June 2018. SFC has taken into account the positive responses and comments received in finalizing L.N. 259.

19. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 259. The Administration has provided an information paper on the proposed details of Phase 2 implementation<sup>9</sup> of the clearing obligation relating to OTC derivative transactions under the over-the-counter derivatives regulatory regime in Hong Kong which was circulated to Panel members vide LC Paper No. CB(1)127/18-19(01) on 2 November 2018. Members of the Panel raised no question on the information paper.

20. L.N. 259 comes into operation on 1 March 2019.

<sup>9</sup> Phase 2 clearing mainly includes the addition of new calculation periods and the expansion of product scope to include certain Australian Dollar interest rate swaps for mandatory clearing obligation (see LC Paper No. CB(1)127/18-19(01)).

**Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017  
(Commencement) Notice 2018**

**(L.N. 260)**

21. By L.N. 260, the Secretary for Justice appoints 1 February 2019 as the day on which section 3 (in so far as it relates to the application of Divisions 3 and 5 of the new Part 10A in relation to an arbitration within the meaning of that Part only) of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (6 of 2017) ("the Amendment Ordinance") comes into operation.

22. The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 ("the Bill") was passed by LegCo on 14 June 2017 and the enacted Ordinance was published in the Gazette as Ord. No. 6 of 2017 on 23 June 2017. The Amendment Ordinance amends the Arbitration Ordinance (Cap. 609) and the Mediation Ordinance (Cap. 620) to ensure that third party funding of arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty. Except section 3 (in so far as it relates to the application of Divisions 3 and 5 of the new Part 10A) and section 4 (in so far as it relates to the new section 7A(c) and (d)), the Amendment Ordinance came into operation on the date of publication in the Gazette, i.e. 23 June 2017. A Bills Committee was formed to study the Bill. Members may refer to the Report of the Bills Committee (LC Paper No. CB(4)1161/16-17) for further information.

23. The uncommenced provision of the Amendment Ordinance that is brought into operation by L.N. 260 relates to the non-application of the common law offences of maintenance and champerty, etc. to third party funding of arbitration provided in Division 3 of the new Part 10A of Cap. 609 and the limited application of the new Part 10A for non-Hong Kong arbitration (where the place of arbitration is outside Hong Kong or where there is no place of arbitration), and the measures and safeguards to regulate the communication and disclosure of information for third party funding of arbitration provided in Division 5 of the new Part 10A.

24. The remaining uncommenced provision (i.e. section 4, in so far as it relates to the new section 7A(c) and (d) of the Amendment Ordinance) concerns the amendments to Cap. 620 which relate to third party funding of mediation under Cap. 620. Upon enquiries with the Department of Justice ("DoJ"), DoJ advised that depending on the progress in addressing any outstanding issues concerning third party funding of mediation and subject to further consultation with the Steering Committee on Mediation, it intends to bring the remaining uncommenced provision into operation as soon as practicable.

25. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, during the course of scrutiny of the Bill, members of the Bills Committee had not expressed any objection to the commencement of the Amendment Ordinance as provided in section 1 of the Amendment Ordinance.

**Private Healthcare Facilities Ordinance (Specification of Date for Section 135(1)(a)) Notice (L.N. 261)**

**Private Healthcare Facilities Ordinance (Specification of Date for Section 136(1)(a)) Notice (L.N. 262)**

26. L.N. 261 and L.N. 262 are made by the Director of Health ("Director") under the Private Healthcare Facilities Ordinance (Cap. 633). Cap. 633 was published in the Gazette on 30 November 2018 following the passage of the Private Healthcare Facilities Bill ("the Bill") by LegCo on 15 November 2018. Cap. 633 provides for a new regulatory regime for four types of private healthcare facilities, namely hospitals, day procedure centres ("DPCs"), clinics and health services establishments. Cap. 633 will come into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette. A Bills Committee was formed to study the Bill. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)209/18-19) for further information.

27. Sections 135 and 136 of Cap. 633 provide for transitional arrangements for existing operators of DPCs and clinics respectively. Under sections 135(6)(a) and 136(6)(a) of Cap. 633, the Director may, by notice published in the Gazette, specify the date for the application of these transitional arrangements. By L.N. 261 and L.N. 262, the Director specifies 30 November 2018 as the date for the above purposes.

28. The effect of L.N. 261 and L.N. 262 is that once Cap. 633 (including sections 135 and 136) comes into operation, if an application for a DPC licence or a clinic licence under the new licensing regime is made during the transitional period in respect of an existing DPC or clinic that was in operation on 30 November 2018, the Director must issue a provisional DPC licence or provisional clinic licence if certain conditions are satisfied during the transitional period. This would permit the applicant to operate the existing DPC or clinic on the premises pending the Director's decision on his application for a licence under the new licensing regime provided in Cap. 633.

29. L.N. 261 and L.N. 262 come into operation on the day on which sections 135 and 136 of Cap. 633 come into operation. Upon enquiries by the Legal Service Division, the Administration advised that the licensing regime under Cap. 633 will be implemented in phases. The provisions relating to

application for hospital licences will commence in mid-2019, followed by DPC licences in 2020. The provisions relating to application for licences and letters of exemption in respect of clinics will commence in 2021 the earliest.

30. According to paragraph 4 of the LegCo Brief (File Ref: FHB/H/53/6) issued by the Food and Health Bureau on 5 December 2018, the Administration considered that given the nature of the provisional licence, it would be appropriate to set the specified dates, with respect to both DPCs and clinics, as the date on which Cap. 633 was gazetted. All persons who operate DPCs or clinics only after 30 November 2018 should prepare themselves for the new licensing regime according to Cap. 633 and aim to obtain a full licence once the registration for DPCs and clinics begins (tentatively in 2020 and 2021 respectively).

31. As advised by the Clerk to the Panel on Health Services, in the course of scrutinizing the Bill, the Bills Committee noted the Administration's plan to commence registration of DPCs and clinics under the new regulatory regime in 2020 and 2021 respectively, and that transitional arrangements would be provided for existing DPCs and clinics operating on the dates specified by the Director.

### **Concluding observations**

32. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 246 to L.N. 258 and will report further, if necessary. No difficulties have been identified in the legal and drafting aspects of L.N. 241 to L.N. 245 and L.N. 259 to L.N. 262.

Prepared by

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13 December 2018

LS/S/11/18-19