立法會
Legislative Council

LC Paper No. LS36/18-19

Paper for the House Committee Meeting on 4 January 2019

Legal Service Division Report on Subsidiary Legislation Gazetted on 21 December 2018

Tabling in LegCo	**:**	Council meeting of 9 January 2019
Amendment to be made by	**:**	Council meeting of 30 January 2019 (or that of 27 February 2019 if extended by resolution)

Exemption from Profits Tax (People's Bank of China Debt Instrument) Order (L.N. 267)

L.N. 267 is made by the Chief Executive ("CE") in Council under section 87 of the Inland Revenue Ordinance (Cap. 112). It exempts a person from the payment of profits tax chargeable under Part 4 of Cap. 112 for the years of assessment commencing on or after 1 April 2018 in respect of sums received by, or accrued to, the person as interest or profits arising from a debt instrument ("DI") issued in Hong Kong by the People's Bank of China ("PBoC").

2. The legal effect of L.N. 267 is that the profits tax exemption currently available to sovereign bonds issued in Hong Kong by the Central People's Government by virtue of the Exemption from Profits Tax (Renminbi Sovereign Bonds) Order (Cap. 112BH) and the Exemption from Profits Tax (Non-Renminbi Sovereign Bonds) Order (Cap. 112DA) is extended to cover DIs issued by PBoC.

3. According to paragraph 10 of the Legislative Council ("LegCo") Brief (File Reference: MA/2/1/10C(2018)) issued by the Financial Services and the Treasury Bureau on 21 December 2018, the exemption provided in L.N. 267 will facilitate PBoC's issuance of DIs in Hong Kong and is conducive to the further development of Hong Kong's offshore Renminbi business and debt market. It will also help strengthen financial cooperation between Hong Kong and the Mainland, thereby strengthening Hong Kong's position as an international financial centre. According to paragraph 7 of the LegCo Brief, given that PBoC issued DIs in Hong Kong on 9 November 2018 (i.e. falling within the year of assessment 2018/19), the Administration proposes that the exemption is to apply to the year of assessment commencing on 1 April 2018 and for all subsequent years of assessment.

4. According to paragraph 11 of the LegCo Brief, following the implementation of L.N. 267, the estimated amount of tax foregone based on profits arising from DI interest payment would be around $95.7 million.

5. As advised by the Clerk to the Panel on Financial Affairs, the Administration has provided an information paper to the Panel on the proposal to extend profits tax exemption available to sovereign bonds issued in Hong Kong to DIs issued in Hong Kong by PBoC. The paper was circulated to Panel members vide LC Paper No. CB(1)391/18-19(01) on 21 December 2018 and no member has raised enquiries on the paper.

6. L.N. 267 comes into operation on 1 March 2019.

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

United Nations Sanctions (Mali) Regulation 2018 (L.N. 268)

United Nations Sanctions (Democratic Republic of the Congo) Regulation 2018 (L.N. 269)

7. L.N. 268 and L.N. 269 are made by the Acting CE 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. They came into operation when published in the Gazette on 21 December 2018.

<u>L.N. 268</u>

8. In 2017, the Security Council of the United Nations ("UNSC") adopted Resolution 2374 (2017) to impose sanctions against Mali. The Resolution has been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Mali) Regulation (Cap. 537BZ), which expired at midnight on 4 September 2018.

9. L.N. 268 implements certain decisions in Resolution 2432 (2018) adopted by UNSC on 30 August 2018 to renew the sanctions against Mali. It provides for, among others, the prohibition against:

(a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;

(b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and

(c) entry into or transit through the Hong Kong Special Administrative Region ("HKSAR") by certain persons.

10. L.N. 268 will expire at midnight on 31 August 2019.

L.N. 269

11. Since 2003, UNSC has adopted several resolutions imposing sanctions against the Democratic Republic of the Congo ("Congo") in view of the threats to international peace and security brought about by the situation in the region. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2017 (Cap. 537BX), which expired at midnight on 1 July 2018.

12. L.N. 269 implements certain decisions in Resolution 2424 (2018) adopted by UNSC on 29 June 2018 to renew the sanctions against Congo. It provides for, among others, the prohibition against:

(a) the supply, sale, transfer or carriage of arms or related materiel to persons operating in the territory of Congo and related persons;

(b) the provision of assistance, advice or training related to military activities to persons operating in the territory of Congo;

(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 HKSAR by certain persons.

13. L.N. 269 will expire at midnight on 1 July 2019.

Other information and remarks

14. It is noted that unlike the expired Cap. 537BZ and Cap. 537BX which empowered CE to specify the relevant persons or entities for the purposes of the respective UNSC resolutions that they sought to implement, L.N. 268 and L.N. 269

confer power on the Secretary for Commerce and Economic Development, instead of CE, to publish on the website of the Commerce and Economic Development Bureau ("CEDB") the relevant lists of individuals or entities. In response to the Legal Service Division's enquiry on the reason for adopting a different arrangement in L.N. 268 and L.N. 269, the Administration explained that since the names of individuals or entities to be included in the lists will be the same as those listed by UNSC, the Administration considers that the specification of individuals or entities need not be done by CE. Further, the arrangement in L.N. 268 and L.N. 269 is the same as that provided in section 31(1) of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE). In the course of studying Cap. 537AE at its meeting on 18 July 2018, the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("Subcommittee") noted the new arrangement under section 31(1) of Cap. 537AE and raised no queries.

15. 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. Accordingly, L.N. 268 and L.N. 269 are not required to be tabled in LegCo and are not subject to amendment by LegCo. However, since they come within the terms of reference of the Subcommittee, Members may consider referring them to the Subcommittee for its consideration.

16. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 268 and L.N. 269 (File Ref: CITB CR 75/53/10 and CITB CR 75/53/4 respectively) issued by CEDB in December 2018 were circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)392/18-19 on 24 December 2018. A marked-up version showing the changes made by L.N. 268 and L.N. 269 to the relevant expired regulations is at Annex E and Annex F to the respective LegCo Briefs.

Concluding observations

17. Subject to Members' views on the matter stated in paragraph 14 above, no difficulties have been identified in the legal and drafting aspects of L.N. 267 to L.N. 269.

Prepared by
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