

**立法會**  
***Legislative Council***

LC Paper No. LS59/18-19

**Paper for the House Committee Meeting  
on 22 March 2019**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 15 March 2019**

**Tabling in LegCo** : Council meeting of 20 March 2019

**Amendment to be made by** : Council meeting of 17 April 2019 (or that of 8 May 2019 if extended by resolution)

**Pharmacy and Poisons (Amendment) (No. 3) Regulation  
2019**

**(L.N. 30)**

L.N. 30 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 two items of substances, namely, Brexpiprazole; its salts, and Ertugliflozin; its salts ("the Substances") to Division A of Schedule 1, Division A of Schedule 3 and Division A of Part 1 of the Poisons List set out in Schedule 10 ("Poisons List").

2. The effect of L.N. 30 is that the Substances are subject to restrictions with respect to their sale, supply, labelling and storage, and that they 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 Substances in the Poisons List means that they 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 March 2019, PPB considers the amendments appropriate in view of the potency, toxicity and potential side effects of the Substances. Members may refer to Annex B to the LegCo Brief for details of the Substances.

4. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 30.

5. L.N. 30 came into operation on the date of publication in the Gazette, i.e. 15 March 2019.

**Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation** (L.N. 31)

**Companies (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice** (L.N. 32)

**Companies Ordinance (Amendment of Schedule 7) Notice 2019** (L.N. 33)

6. The Companies (Amendment) (No. 2) Ordinance 2018 (Ord. No. 35 of 2018) ("Amendment Ordinance") was enacted by LegCo in 2018 and came into effect on 1 February 2019, except sections 79 and 89 which come into operation on the day appointed by the Secretary for Financial Services and the Treasury ("SFST") by notice published in the Gazette. In relation to the disclosure requirements for non-Hong Kong companies<sup>1</sup>, the Amendment Ordinance amends the Companies Ordinance (Cap. 622) by (a) adding new sections 805A and 805B to empower the Financial Secretary ("FS") to make regulations to require non-Hong Kong companies to disclose prescribed information and to set out the criminal liabilities for failure to make such disclosures and (b) repealing the existing disclosure requirements in section 792 of Cap. 622 and the corresponding offences in Schedule 7 to Cap. 622.

L.N. 31 and L.N. 33

7. L.N. 31 is made by FS under sections 805A and 805B of Cap. 622. It provides for, in relation to a non-Hong Kong company, the requirements regarding the display of its name and place of incorporation, stating its name and place of incorporation in communication documents, the disclosure of the limited liability of its members and the disclosure of certain matters while it is in liquidation. L.N. 31 also stipulates the offences for contravening such disclosure requirements by non-Hong Kong companies.

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<sup>1</sup> Section 2(1) of the Companies Ordinance (Cap. 622) provides that "non-Hong Kong company means a company incorporated outside Hong Kong that (a) establishes a place of business in Hong Kong on or after the commencement date of Part 16 [of Cap. 622]; or (b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date."

8. It is noted that L.N. 31 is drafted in a way similar to the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) which sets out the requirements of a Hong Kong company to display its company name and to disclose the company's status of limited liability.

9. L.N. 33 is made by FS under section 911(1) of Cap. 622 to amend Schedule 7 to Cap. 622 by adding item 9, the offences for contravening the disclosure requirements under L.N. 31, to that Schedule. Under section 899 of Cap. 622, the Registrar of Companies ("Registrar") may give a person reasonably believed to have committed an offence specified in Schedule 7 to Cap. 622 a notice to require him to rectify the default by paying a compounding fee to the Registrar and remedying the breach constituting the offence within a specified period. If that person complies with the notice, no proceedings will be instituted against him for that offence.

10. L.N. 31 and L.N. 33 come into operation on the day on which sections 79 and 89 of the Amendment Ordinance come into operation (i.e. 1 August 2019 by virtue of L.N. 32 reported below).

#### L.N. 32

11. By L.N. 32 made under section 1(3) of the Amendment Ordinance, SFST appoints 1 August 2019 as the day on which sections 79 and 89 of the Amendment Ordinance come into operation.

12. Section 79 of the Amendment Ordinance repeals section 792 of Cap. 622 which requires non-Hong Kong companies to disclose prescribed information. Section 89 of the Amendment Ordinance amends Schedule 7 to Cap. 622 by repealing item 7 in that Schedule (i.e. offences for contravening the disclosure requirements by non-Hong Kong companies under section 792 of Cap. 622). Since the requirements under section 792 of Cap. 622 and corresponding offences in item 7 of Schedule 7 to Cap. 622 have been re-enacted in L.N. 31 and L.N. 33 respectively, section 792 of Cap. 622 and the corresponding offences in Schedule 7 to Cap. 622 can be repealed.

13. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 31 to L.N. 33. During the scrutiny of the legislation of the Amendment Ordinance, members of the Bills Committee formed to study the Companies (Amendment) Bill 2018 did not oppose to the proposal of empowering FS to make regulations relating to the disclosure of prescribed information by non-Hong Kong companies.

**Hong Kong Science and Technology Parks Corporation  
Ordinance (Amendment of Schedule 1) Notice 2019**

**(L.N. 34)**

14. L.N. 34 is made by the Hong Kong Science and Technology Parks Corporation (HKSTPC) under section 27(2) of the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565). It amends Schedule 1 to Cap. 565 by adding "Tai Po Town Lot No. 245, Pak Shek Kok, New Territories, Hong Kong (InnoCell)" ("InnoCell") to the list of premises where activities related to the purposes of HKSTPC are, or are to be, carried out. The effect of L.N. 34 is to enable HKSTPC to manage and control the specified premises.

15. L.N. 34 comes into operation on 19 April 2019.

16. According to paragraph 7 of the LegCo Brief (no file reference) issued by Innovation and Technology Bureau and Innovation and Technology Commission in March 2019, in the Policy Address announced in January 2017, the Chief Executive announced that the Administration would support the HKSTPC in developing an InnoCell adjacent to the Hong Kong Science Park in order to reinforce the development of the innovation and technology ecosystem.

17. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 34. The Panel was consulted on 18 July 2017 and 21 November 2017 on the development of InnoCell, and members of the Panel supported the financial proposal for developing InnoCell in principle. The relevant financial proposal was approved by the Finance Committee on 2 February 2018.

**Patents (General) (Amendment) Rules 2019**

**(L.N. 35)**

18. Under the Patents Ordinance (Cap. 514) enacted in 1997, standard patents applied under the "re-registration" ("RR") system<sup>2</sup> and short-term patents ("STPs") may be granted in Hong Kong. The Patents (Amendment) Ordinance 2016 (Ord. No. 17 of 2016) ("P(A)O") amends Cap. 514 mainly to provide for a new system for the original grant of standard patents ("SP(O)") (while retaining the RR system) and to refine the STP system by providing for substantive examination of STPs. Under the P(A)O, the Registrar of Patents ("RP") is empowered to conduct substantive examination of SP(O) applications

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<sup>2</sup> Under the re-registration system, subject to procedural compliance, standard patents are granted after a prior grant for the same invention has been obtained in the State Intellectual Property Office of the People's Republic of China or the United Kingdom Patent Office, etc. Members may refer to the Report of the Bills Committee on Patents (Amendment) Bill 2015 (LC Paper No. CB(1)972/15-16) issued on 27 May 2016 for further information.

to determine whether patentability requirements have been satisfied. The P(A)O has not been brought into operation pending the making of the relevant rules.

19. L.N. 35 is made by the RP under section 149 of Cap. 514 with the consent of the FS to amend the Patents (General) Rules (Cap. 514C) to specify the details of implementing the P(A)O. It contains 76 sections and two Schedules. These provisions provide for, among others:

- (a) the requirements and/or procedures concerning the filing of SP(O) applications and the formality and substantive examinations of SP(O) applications;
- (b) the requirements and/or procedures concerning the substantive examination of an STP and the request for amendment of an STP after grant;
- (c) prescribing the fees in relation to SP(O) applications<sup>3</sup> and modifying the fees for standard patents;<sup>4</sup> and
- (d) other consequential or technical amendments.

20. According to paragraph 18 of the LegCo Brief (File Ref: CITB 06/18/23) issued by the Commerce and Economic Development Bureau on 13 March 2019, the Intellectual Property Department briefed and consulted the major professional/representative bodies of patent practitioners when drawing up L.N. 35. They are generally supportive and consider the relevant legislative proposals reasonable and comprehensive.

21. As advised by the Clerk to the Panel on Commerce and Industry, the Panel was briefed on the proposed amendments to Cap. 514C on 19 June 2018. The Panel supported the legislative proposals in principle and members expressed views and concerns on the proposed fee levels, the progress of setting up the Patent Prosecution Highway with other jurisdictions, and the Administration's plan for the next 5-10 years on grooming local patent talents in the operation of the new patent system, etc.

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<sup>3</sup> For SP(O) applications by paper and electronic means, the filing fees are \$480 and \$345 respectively. The fees for requiring substantive examination of an SP(O) application or an STP are \$4,000.

<sup>4</sup> For standard patents, the annual renewal fee of \$540 (commencing in the fourth year) is replaced by a three-tier progressive annual renewal rates that respectively apply to the fourth to 10<sup>th</sup> year (at \$450 per year); 11<sup>th</sup> to 15<sup>th</sup> year (at \$620 per year) and 16<sup>th</sup> to 20<sup>th</sup> year (at \$850 per year).

22. L.N. 35 comes into operation on a day to be appointed by the RP by notice published in the Gazette. According to paragraph 16 of the LegCo Brief, that day will tie in with the commencement date of the P(A)O.

### **Concluding Observations**

23. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 30, L.N. 32 to L.N. 34. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 31 and L.N. 35 and will report further, if necessary.

Prepared by

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