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**Paper for the House Committee Meeting
on 12 April 2019**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 29 March 2019**

Tabling in LegCo : Council meeting of 3 April 2019

Amendment to be made by : Council meeting of 17 April 2019 (or that of 22 May 2019 if extended by resolution)

Insurance (Prescribed Fees) (Amendment) Regulation 2019 (L.N. 43)

Section 128 of the Insurance Ordinance (Cap. 41), as added by the Insurance Companies (Amendment) Ordinance 2015 (Ord. No. 12 of 2015) ("the Amendment Ordinance"), provides that the Chief Executive ("CE") in Council may, after consulting with the Insurance Authority ("IA"), by regulations provide for the payment to IA prescribed fees for, among others, anything done by IA in performing a function under Cap. 41. Section 64O of Cap. 41 (added by section 74¹ of the Amendment Ordinance which has yet to come into operation) provides for the keeping of a register of licensed insurance intermediaries by IA.

2. L.N. 43 is made by CE in Council under section 128(1) of Cap. 41 after consultation with IA to add 13 new items of fees to the Schedule to the Insurance (Prescribed Fees) Regulation (Cap. 41B). The new fees items relate to:

- (a) obtaining of a copy or a certified copy of an entry in the register of licensed insurance intermediaries under section 64O(3)(a) and (b) of Cap. 41 (two items in section 4(2) of L.N. 43); and
- (b) IA's performance of functions under Cap. 41, including extending the period within which certain information is required to be submitted and waiving the annual fee payable by an authorized insurer under specified circumstances (11 items in section 4(6) of L.N. 43).

¹ Section 74 adds provisions (including new section 64O) to Part X of Cap. 41 to provide for matters relating to the licensing of insurance intermediaries.

3. L.N. 43 also provides for the time in which the prescribed fees must be paid to the IA (section 3), revises the charging mechanism for the existing item 1 of the Schedule to Cap. 41B (section 4(1)) and makes certain textual amendments (section 4(3) to (5)). Members may wish to refer to Annex B to the Legislative Council ("LegCo") Brief (File Ref.: INS/2/5C) issued by the Financial Services and the Treasury Bureau on 27 March 2019 for details.²

4. According to paragraph 5 of the LegCo Brief, the new items of fees are to recover the costs of providing specific services by IA. In determining the fee levels, IA has used the same computation methodology as that for the existing fees as specified in Cap. 41B, and such methodology is largely in line with the approach used by the Government.

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 for IA to collect a second batch of fees. The paper was circulated to Panel members vide LC Paper No. CB(1)308/18-19(01) on 11 December 2018. No member raised enquiries on the paper.

6. L.N. 43 (except section 4(2) relating to the fees set out in paragraph 2(a) above) comes into operation on 27 May 2019. Section 4(2) comes into operation on the day on which section 74 (in so far as it relates to the new section 64O(3)³) of the Amendment Ordinance comes into operation.

Merchant Shipping (Safety) (Ships Operating in Polar Waters) Regulation (L.N. 44)

Merchant Shipping (Prevention of Oil Pollution) (Amendment) Regulation 2019 (L.N. 45)

Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulation 2019 (L.N. 46)

Merchant Shipping (Prevention of Pollution by Sewage) (Amendment) Regulation 2019 (L.N. 47)

Merchant Shipping (Prevention of Pollution by Garbage) (Amendment) Regulation 2019 (L.N. 48)

7. L.N. 44 to L.N. 48 are made by the Secretary for Transport and Housing to implement the latest requirements under the International Convention for the

² In the LegCo Brief, items 7A and 7B are counted as one item by the Administration.

³ Section 64O has yet to come into operation and will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette pursuant to section 1(2) of the Amendment Ordinance.

Safety of Life at Sea ("SOLAS") and the International Convention for the Prevention of Pollution from Ships ("MARPOL") of the International Maritime Organization ("IMO") in relation to ships operating in polar waters (i.e. Arctic and Antarctic waters) as well as the requirements under MARPOL in relation to the discharge of sewage from passenger ships within the Baltic Sea Special Area.⁴ SOLAS and MARPOL are implemented in Hong Kong through the Merchant Shipping (Safety) Ordinance (Cap. 369) and the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) and their subsidiary legislation respectively.

L.N. 44

8. L.N. 44 is a new regulation made under sections 107 and 112B of Cap. 369 to give effect to the requirements under the International Code for Ships Operating in Polar Waters ("Polar Code")⁵ adopted by IMO in relation to the safety of ships operating in polar waters. Under L.N. 44, certain ships registered in Hong Kong ("Hong Kong ship") operating in polar waters must have a Polar Ship Certificate which must be kept on board. Under Part 2 of L.N. 44, a Hong Kong ship operating in polar waters must comply with the applicable requirements in the Polar Code. Contravention of the relevant provisions is an offence and is subject to a maximum penalty of a fine at level 4 (currently \$25,000) and imprisonment for two years.

9. L.N. 44 also provides for the following matters:

- (a) the power of the Director of Marine to issue Polar Ship Certificates, and the form, duration, cessation, cancellation and alteration of Polar Ship Certificates (Part 3);
- (b) types of surveys that are required to be carried out for a passenger ship and a cargo ship before a Polar Ship Certificate is issued or renewed (Part 4); and
- (c) the defence to certain offences in Part 2 and transitional arrangements (Part 5).

L.N. 45 to L.N. 48

10. L.N. 45 to L.N. 48 are made under sections 3 and 3A of Cap. 413 to implement various requirements of the Polar Code and the relevant amendments to

⁴ According to footnote 3 of LegCo Brief, Baltic Sea was designated by IMO as a special area for which special methods for prevention of pollution of the sea are required.

⁵ The Polar Code, which came into force in 2017, sets out requirements in various aspects including the safety of ship operation and the protection of the marine environment in polar waters.

MARPOL in relation to the protection of marine environment. The key provisions are set out below:

- (a) L.N. 45 amends the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A) to provide that oil or oily mixtures must not be discharged into the sea from Hong Kong ships in Arctic waters and Hong Kong ships that are constructed on or after 1 January 2017 must not operate in polar waters unless certain requirements in relation to the structure and arrangements of the ship have been complied with;
- (b) L.N. 46 amends the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413B) to provide that noxious liquid substances or mixtures containing any noxious liquid substances as defined in Annex II of MARPOL must not be discharged into the sea from Hong Kong ships in Arctic waters. Further, Hong Kong ships that are constructed on or after 1 January 2017 and operating in polar waters must not load or carry certain noxious liquid substances unless certain conditions are complied with;
- (c) L.N. 47 amends the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413K) to prohibit certain ships operating in polar waters and certain passenger ships within the Baltic Sea Special Area from discharging sewage into the polar waters and the Baltic Sea Special Area unless they have, among other things, an approved sewage treatment system in operation; and
- (d) L.N. 48 amends the Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap. 413O) to impose additional requirements for discharge of garbage (such as food wastes) from certain ships into the sea in Arctic waters and the Antarctic area.

Direct reference approach

11. It is noted that the Administration has, pursuant to section 112B of Cap. 369 and section 3A of Cap. 413, adopted the direct reference approach in L.N. 44 to L.N. 48 by referring directly to SOLAS, MARPOL and the Polar Code, as updated from time to time. According to paragraph 15 of the LegCo Brief (File Ref.: THB(T)PML CR 8/10/130/45) issued by the Transport and Housing Bureau in March 2019, this approach allows the local legislation to remain up-to-date as far as practicable.

Consultation

12. According to paragraphs 19 and 20 of the LegCo Brief, the Shipping Consultative Committee and the Hong Kong Fleet Operation Advisory Committee of

the Marine Department were consulted of the legislative proposals in December 2016 and November 2017 respectively. Members of the Committees supported the proposals.

13. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 22 January 2018 and 25 March 2019 on the legislative proposals to incorporate into local legislation the latest requirements of IMO in relation to ships operating in polar waters and the discharge of sewage within the Baltic Sea Special Area respectively. Members were generally supportive of the proposals. Issues on the number of Hong Kong ships operating in polar waters, protection of marine environment and enforcement of the new requirements were also discussed.

Commencement

14. L.N. 44 to L.N. 48 come into operation on 31 May 2019.

Toys and Children's Products Safety Ordinance (Amendment of Schedules 1 and 2) Notice 2019 (L.N. 49)

15. L.N. 49 is made by the Secretary for Commerce and Economic Development under section 37 of the Toys and Children's Products Safety Ordinance (Cap. 424) to update certain safety standards for toys and five classes of children's products⁶ as specified in Schedules 1 and 2 to Cap. 424.

16. Under sections 3 and 5 of Cap. 424, no person shall manufacture, import or supply any toy or children's product unless the toy or product complies with all the applicable requirements in at least one relevant safety standard specified in Schedule 1 or Schedule 2 to Cap. 424 respectively.⁷

17. According to the LegCo Brief (File Ref.: CITB CR 08/18/3) issued by the Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau in March 2019, the revision is to apply the standards updated by the standards institutions since the last amendment to the two Schedules in 2018 (paragraph 4). The Administration has consulted some 50 major trade associations and organizations advocating children welfare in December 2018 and posted a gist of the proposals on the websites. The Administration received three submissions which either supported the proposal or did not raise any objection to it (paragraph 8).

⁶ They are "child safety barriers for domestic use", "children's cots for domestic use", "children's high chairs and multi-purpose high chairs for domestic use", "children's paints" and "playpens for domestic use".

⁷ Section 3(1) and 5(3) of Cap. 424 provide that goods in transit, goods in the course of transshipment or goods manufactured for export are not subject to the said statutory requirement.

18. As advised by the Clerk to the Panel on Economic Development, the Panel was not consulted specifically on L.N. 49.

19. L.N. 49 comes into operation on 1 October 2019.

**Registration of Persons (Application for New Identity Cards)
Order 2018 (Amendment) Order 2019 (L.N. 50)**

20. L.N. 50 is made by the Secretary for Security under section 7B(1) of the Registration of Persons Ordinance (Cap. 177) to implement the second cycle of the Territory-wide Identity Card Replacement Exercise ("Replacement Exercise").

21. In October 2018, the Registration of Persons (Application for New Identity Cards) Order 2018 (Cap. 177J) ("2018 Order") was made to implement the first cycle of the Replacement Exercise which takes place from 27 December 2018 to 1 June 2019. Schedule 2 to the 2018 Order sets out the specified periods for two groups of persons (i.e. who were born in 1985 or 1986 and those in 1968 or 1969) to be called up for identity card replacement.

22. L.N. 50 amends Schedule 2 to the 2018 Order to the effect that holders of valid identity cards who were born in 1955 to 1959 or those in 1964 to 1967 must apply for a new identity card at a smart identity card replacement centre within the respective specified period as follows:

Year of birth	Specified period
1955 or 1956	From 24 September 2019 to 15 November 2019
1957, 1958 or 1959	From 16 November 2019 to 17 February 2020
1964 or 1965	From 27 July 2019 to 23 September 2019
1966 or 1967	From 3 June 2019 to 26 July 2019

23. Under section 7B(3) of Cap. 177, a person who without reasonable excuse fails to apply for a new identity card in accordance with the requirements under Cap. 177J commits an offence and is liable to a fine at level 2 (currently \$5,000).

24. According to paragraph 8 of the LegCo Brief (no file reference) issued by the Security Bureau in March 2019, publicity will continue to be put up through various channels such as television and Internet, etc., throughout the Replacement Exercise.

25. As advised by the Clerk to the Panel on Security, the Panel has not been consulted on L.N. 50. A subcommittee was formed to study the 2018 Order and the Registration of Persons (Application for New Identity Cards) Order (Repeal) Order. Subcommittee members noted that specified periods for other groups of persons

would be added to Schedule 2 by way of amending the 2018 Order as the Replacement Exercise progressed. Members may wish to refer to the report of the Subcommittee (LC Paper No. CB(2)239/18-19) for details of its deliberations.

26. L.N. 50 comes into operation on 3 June 2019.

Solicitors (Professional Indemnity) (Amendment) Rules 2019 (L.N. 51)

Solicitors (Professional Indemnity) (Amendment) (No. 2) Rules 2019 (L.N. 52)

27. L.N. 51 and L.N. 52 are made by the Council of The Law Society of Hong Kong ("the Law Society") under section 73A of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. L.N. 51 and L.N. 52 amend the Solicitors (Professional Indemnity) Rules (Cap. 159M) to implement certain changes to the Professional Indemnity Scheme ("PIS").⁸

L.N. 51

28. Currently, under Cap. 159M, foreign lawyers⁹ who are employed or who work in connection with a Hong Kong law firm are treated as unqualified staff of a law firm for the purpose of calculating the annual contribution to be made by a law firm under PIS. L.N. 51 incorporates foreign lawyers who are employed or who work in connection with a Hong Kong law firm as an additional rating factor in calculating the firm's contributions under PIS. L.N. 51 also extends the entitlement to PIS to former foreign lawyers and former employees who are employed or who worked in connection with a Hong Kong law firm.

29. L.N. 51 comes into operation on 1 July 2019.

L.N. 52

30. Currently, under Cap. 159M, a claim for an indemnity by a person indemnified (i.e. a law firm, a principal in a law firm, a solicitor, etc.) under PIS must not exceed \$10,000,000 per claim. L.N. 52 raises the existing indemnity limit to \$20,000,000 per claim.

31. L.N. 52 comes into operation on 1 October 2019.

⁸ The purpose of PIS is to provide indemnity against loss arising from claims in respect of any civil liability incurred by a solicitor in connection with his/her practice. The Hong Kong Solicitors Indemnity Fund established under PIS was administered by the Hong Kong Solicitors Indemnity Fund Limited.

⁹ "Foreign lawyer" means a person registered as a foreign lawyer under Part IIIA of Cap. 159.

32. According to the LegCo Brief (no file reference) issued by the Law Society on 29 March 2019, L.N. 51 is made in view of the growing trend of Hong Kong law firms employing foreign lawyers and the need to account for them as qualified staff of a firm so that their risk exposure to the PIS may be properly reflected in the PIS contributions and deductibles payable by their firms (paragraph (4)). As to L.N. 52, the existing PIS indemnity limit of \$10 million per claim has been in place since 1994 and the increase of such limit to \$20 million per claim under L.N. 52 is made after consideration of various factors including the rise in property values over the last 20 years and PIS claims statistics (paragraphs (11) and (12)). Members of the Law Society have been informed of the changes to be made to the PIS by its publications since December 2016 (paragraph (24)).

33. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Law Society, by its letter dated 12 April 2017, provided a paper on the amendments relating to the incorporation of the number of foreign lawyers into the calculation formula under PIS. The paper was issued to members of the Panel on 19 April 2017 (LC Paper No. CB(4)870/16-17(01)). At the Panel meeting on 24 April 2017, Panel members noted the above information paper and did not raise any views. However, the Panel has not been consulted on the increase in the indemnity limit per claim.

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

United Nations Sanctions (Libya) Regulation 2019	(L.N. 53)
United Nations Sanctions (Libya) Regulation 2011 (Repeal) Regulation	(L.N. 54)
United Nations Sanctions (Somalia) Regulation 2019	(L.N. 55)
United Nations Sanctions (Somalia) Regulation (Repeal) Regulation	(L.N. 56)
United Nations Sanctions (Eritrea) Regulation (Repeal) Regulation	(L.N. 57)

34. L.N. 53 to L.N. 57 are made by CE under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs ("MFA") of the People's Republic of China and after consultation with the Executive Council. They came into operation when published in the Gazette on 29 March 2019.

L.N. 53 and L.N. 54 (Sanctions against Libya)

35. Since 2011, the Security Council of the United Nations ("UNSC") has adopted various resolutions to impose sanctions against Libya in view of, among

other things, serious violations of human rights and attacks against civilians in Libya. The United Nations Sanctions (Libya) Regulation 2011 (Cap. 537AW) was made and amended to implement various sanctions against Libya including arms embargo, travel ban, financial sanctions, ban on flights and petroleum-related sanctions. Cap. 537AW was last amended in 2017 (L.N. 151 of 2017). Under section 43 of Cap. 537AW, the provisions relating to petroleum sanctions expired at midnight on 15 November 2018.

36. L.N. 53 implements certain decisions in Resolution 2441 (2018) adopted by UNSC on 5 November 2018 in respect of Libya. It provides for, among others, the prohibition against:

- (a) the supply, sale, transfer or carriage of arms or related materiel to certain persons;
- (b) the loading, transport or discharge of petroleum from Libya aboard certain ships ("designated vessels"), entry of designated vessels into the Hong Kong Special Administrative Region ("HKSAR") and financial transactions related to petroleum from Libya (collectively "petroleum-related sanctions");
- (c) the provision of technical assistance, training or financial or other assistance related to military activities, etc. in certain circumstances;
- (d) the procurement of arms or related materiel from certain persons;
- (e) making available to or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (f) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities;
- (g) entry into or transit through the HKSAR by certain persons; and
- (h) aircraft carrying arms or related materiel or armed mercenary personnel taking off from, landing in or flying in the HKSAR.

37. The petroleum-related sanctions will apply until midnight on 15 February 2020.

38. L.N. 54 repeals Cap. 537AW consequentially on the making of L.N. 53.

39. Members may refer to the LegCo Brief (File Ref: CITB CR 95/53/1) issued by the Commerce and Economic Development Bureau ("CEDB") in March 2019 for further information on L.N. 53 and L.N. 54. A marked-up version showing the changes made by L.N. 53 to the repealed Cap. 537AW is at Annex E to the LegCo Brief.

L.N. 55 and L.N. 56 (Sanctions against Somalia)

40. Since 1992, UNSC has adopted various resolutions to impose sanctions (with certain exemptions) against Somalia having regard to the heavy loss of human lives and widespread material damages resulting from the conflict in the country. Pursuant to the instructions of MFA, the HKSAR Government made the United Nations Sanctions (Somalia) Regulation (Cap. 537AN) in 2009 to implement the sanction measures and the relevant exemptions in respect of Somalia. Cap. 537AN was last amended in 2018 (L.N. 66 of 2018). Under section 32(6) of Cap. 537AN, certain provisions expired at midnight on 15 November 2018.

41. L.N. 55 implements certain decisions in Resolution 2444 (2018) adopted by UNSC on 14 November 2018 in respect of Somalia. It provides for the prohibition against:

- (a) the supply, sale, transfer, or carriage of weapons or military equipment to Somalia;
- (b) the provision of technical advice, financial or other assistance, or training, related to military activities in certain circumstances;
- (c) the importation of charcoal from Somalia;
- (d) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (e) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by certain persons or entities; and
- (f) entry into or transit through the HKSAR by certain persons.

42. L.N. 55 also extends the exemptions to the sanctions of arms embargo and financial sanctions to midnight on 15 November 2019.

43. L.N. 56 repeals Cap. 537AN consequentially on the making of L.N. 55.

L.N. 57 (Lifting sanctions against Eritrea)

44. Since 2009, UNSC has adopted various resolutions¹⁰ to impose a range of sanctions¹¹ against Eritrea in view of the international concern over the unresolved border dispute between Eritrea and Djibouti and Eritrea's support to the armed groups

¹⁰ Resolution 1907 (2009), Resolution 2023 (2011), Resolution 2060 (2012) and Resolution 2111 (2013).

¹¹ These sanctions include arms embargo, travel ban, financial sanctions and targeted sanctions.

in Somalia that upset the peace process in the region. These sanctions were implemented in Hong Kong through the United Nations Sanctions (Eritrea) Regulation (Cap. 537AR).

45. Taking note of the recent rapprochements between Eritrea and Djibouti and with a view to encouraging further efforts towards normalization of relations between the two countries, UNSC adopted Resolution 2444 (2018) on 14 November 2018 to terminate all the sanctions imposed on Eritrea. L.N. 57 repeals Cap. 537AR to implement Resolution 2444 (2018).

46. Members may refer to LegCo Brief (File Ref: CITB CR 75/53/3 and CITB CR 102/53/1) issued by the CEDB in March 2019 for further information on L.N. 55 to L.N. 57. A marked-up version showing changes made by L.N. 55 to the repealed Cap. 537AN is at Annex F to the LegCo Brief.

Other matters

47. 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. Therefore, L.N. 53 to L.N. 57 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 to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("Subcommittee"), Members may consider referring L.N. 53 to L.N. 57 to the Subcommittee for its consideration.

48. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 53 and L.N. 54 (File Ref: CITB CR 95/53/1) and L.N. 55 to L.N. 57 (File Ref: CITB CR 75/53/3 and CITB CR 102/53/1) were circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)827/18-19 on 1 April 2019.

Concluding observations

49. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 44 to L.N. 48, L.N. 51 and L.N. 52 and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 43, L.N. 49 and L.N. 50, L.N. 53 to L.N. 57.

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