

立法會
Legislative Council

LC Paper No. LS73/18-19

**Paper for the House Committee Meeting
on 24 May 2019**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 May 2019**

Tabling in LegCo : Council meeting of 22 May 2019

Amendment to be made by : Council meeting of 19 June 2019 (or that of
10 July 2019 if extended by resolution)

**Telecommunications (Method for Determining Spectrum
Utilization Fee) (Spectrum for Auction) Regulation** (L.N. 74)

**Telecommunications (Designation of Frequency Bands
subject to Payment of Spectrum Utilization Fee)
(Amendment) Order 2019** (L.N. 75)

Background

On 13 December 2018, the Secretary for Commerce and Economic Development ("SCED") and the Communications Authority ("CA") issued Joint Statements promulgating their decisions to assign 380 MHz of spectrum in the 3.5 GHz band, the 3.3 GHz band and the 4.9 GHz band ("related bands"), which could be used for providing the fifth generation ("5G") mobile services in Hong Kong, by way of auction.

L.N. 75

2. L.N. 75 is made by CA under section 32I(1) of the Telecommunications Ordinance (Cap. 106) after carrying out the consultation required under section 32G(2) of Cap. 106. It adds a new Part 8 to the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y) in order to designate three additional frequency bands (namely 3300-3400 MHz, 3400-3600 MHz and 4840-4920 MHz) ("the three additional frequency bands")

in which the use of spectrum is subject to the payment of spectrum utilization fee ("SUF") by the users of the spectrum.

L.N. 74

3. L.N. 74 is a new regulation made by SCED under section 32I of Cap. 106 to:

- (a) provide for the determination by auction, and the payment, of SUF for using the spectrum that falls within the three additional frequency bands set out in the Schedule to L.N. 74;
- (b) exempt from payment of SUF for using the spectrum that falls within a frequency band specified in section 8 of L.N. 74 for the sole purpose of certain functions related to the use, maintenance, operation and control of space objects;
- (c) specify the payment of SUF by way of a lump sum payment or in 15 annual instalments at the time and in the way required by CA;
- (d) empower SCED to specify the minimum amount of SUF to be determined under L.N. 74; and
- (e) empower CA to arrange for an auction and specify the terms and conditions of the auction.

Consultation

4. According to paragraph 10 of the Legislative Council ("LegCo") Brief (File Ref: CCIB/B 480-20-8-1-10(C)) issued by the Commerce and Economic Development Bureau on 15 May 2019, SCED and CA jointly conducted public consultations in relation to the assignment and related SUF of the related bands from 2 May to 13 June 2018 and from 28 August to 26 September 2018. The comments received and the responses of SCED and CA have been set out in the Joint Statements issued on 13 December 2018.

5. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Panel was consulted on the spectrum assignment exercises in various frequency bands that are planned for 2019 at its meeting held on 10 May 2019. The Panel had no objection to the proposal. Panel members have asked about the Administration's legislative timetable and the implications of any slippage in the legislative process on the provision of the 5G services. Some members have asked whether the reserved auction price for the spectrum could be reduced so that mobile network operators could devote more

resources on developing the services. Other members have expressed concerns on whether the 5G services would cover all of Hong Kong and whether users of older mobile devices could still be able to access the services.

Commencement

6. L.N. 74 and L.N. 75 come into operation on 12 July 2019.

Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) (Amendment) Rules 2019

(L.N. 76)

7. L.N. 76 is made by the Hong Kong International Arbitration Centre ("HKIAC") under section 13(3) of the Arbitration Ordinance (Cap. 609) with the approval of the Chief Justice. It amends the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap. 609C), among others, by:

- (a) adding a new rule 13(2A) to the effect that HKIAC may, if it considers reasonable in any particular case, waive its fees of \$8,000 for exercising any of its functions as the default appointing authority under the relevant provisions of Cap. 609;
- (b) adding a new rule 13A to the effect that, except any time limits agreed by the parties to an arbitration agreement, or to an arbitral or court proceedings, HKIAC may, if the circumstances of any particular case so justify, amend any of the time limits provided in Cap. 609C, whether the time limit has expired;
- (c) amending rules 6, 8 and 10 to the effect that a party is required to deliver the specified documents in those rules in accordance with section 10 of Cap. 609. Under section 10 of Cap. 609, a written communication is deemed to have been received if it is delivered to the addressee personally, or if it is delivered at his place of business, habitual residence or mailing address etc.; and
- (d) amending rules 7(4) and 9(6) to the effect that HKIAC has the discretion to proceed to make an appointment of an arbitrator or make a decision on the number of arbitrators after the respective time limit in those rules has expired.

8. In response to the Legal Service Division ("LSD")'s enquiries, HKIAC clarified that concerning the amendment to waive its fees in appropriate cases, it had consulted relevant stakeholders and individuals within HKIAC's governing bodies, i.e. the HKIAC Finance & Administration Committee and the HKIAC Council. The proposal was eventually approved by the two bodies. As other amendments are technical in nature, no consultation was conducted.
9. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 76.
10. L.N. 76 comes into operation on 1 August 2019.

**Insurance Companies (Amendment) Ordinance 2015
(Commencement) Notice 2019 (L.N. 77)**

**Insurance (Maximum Number of Authorized Insurers)
Rules (L.N. 78)**

**Insurance (Financial and Other Requirements for Licensed
Insurance Broker Companies) Rules (L.N. 79)**

Background

11. The Insurance Companies (Amendment) Ordinance 2015 (Ord. No. 12 of 2015) ("the Amendment Ordinance") was enacted in July 2015 to amend the Insurance Companies Ordinance (Cap. 41) to provide for, among other things, the establishment of the Insurance Authority (as a body corporate) ("IA") to take over the statutory functions of the Office of the Commissioner of Insurance ("OCI") to regulate insurance companies, fees and levies payable to IA, and a statutory licensing regime for insurance intermediaries to replace the existing self-regulatory system. Under section 1(2) of the Amendment Ordinance, the Amendment Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury ("SFST") by notice published in the Gazette.

12. The Amendment Ordinance is being commenced in three stages. The first stage of commencement was implemented by L.N. 198 of 2015 which brought into operation on 7 December 2015 the provisions of the Amendment Ordinance relating to the establishment of the Provisional Insurance Authority. The second stage of commencement was implemented by L.N. 71 of 2017 which brought into operation on 26 June 2017 the provisions of the Amendment Ordinance relating to the taking over of the regulatory functions of OCI by IA to regulate insurance companies.

L.N. 77

13. L.N. 77 implements the final stage of commencement of the Amendment Ordinance by bringing into operation on 23 September 2019 the remaining uncommenced provisions of the Amendment Ordinance (including section 74 relating to the new statutory licensing regime). These provisions relate to the implementation of the new statutory licensing regime and the taking over of the regulation of insurance intermediaries by IA from the three Self-regulatory Organizations.¹

L.N. 78

14. L.N. 78 is made by IA under sections 64I(1) and 129(1) of Cap. 41 mainly to prescribe the maximum number of authorized insurers by which a person may be appointed as a licensed insurance agency or a licensed individual insurance agent at any time for the purpose of Cap. 41. It also sets out the principles on the counting of the number of authorized insurers under different circumstances.

L.N. 79

15. L.N. 79 is made by IA under sections 53F(4), 64T(2), 64ZA(4)(d), 64ZV(8)(e), 73(1) and 129(1) of Cap. 41 to, among other things, prescribe the financial and other requirements for licensed insurance broker companies in relation to:

- (a) share capital and net assets;
- (b) professional indemnity insurance;
- (c) keeping of separate client accounts;
- (d) keeping of proper books and accounts;
- (e) submission of audited financial statements and auditor's reports;
and
- (f) savings and transitional arrangements.

¹ The three Self-regulatory Organizations are the Insurance Agents Registration Board established under the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association.

Consultation

16. According to paragraph 15 of the LegCo Brief (File Ref: INS/2/3C) issued by the Financial Services and the Treasury Bureau and IA on 15 May 2019, IA consulted the public on L.N. 78 and L.N. 79 from 31 October 2018 to 31 December 2018 and from 23 November 2018 to 23 January 2019 respectively. IA has taken into account the feedback received during the consultation when finalizing L.N. 78 and L.N. 79, and issued the consultation conclusions on 29 April 2019.

17. As advised by the Clerk to the Panel on Financial Affairs, the Administration has provided an information paper to the Panel on the three pieces of subsidiary legislation relating to the commencement of the new statutory regulatory regime for insurance intermediaries. The paper was circulated to Panel members vide LC Paper No. CB(1)1602/18-19(01) on 15 May 2019. No member has raised queries on the paper.

Commencement

18. L.N. 78 and L.N. 79 come into operation on the day on which section 74 of the Amendment Ordinance comes into operation, i.e. 23 September 2019.

Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice (L.N. 80)

19. By L.N. 80, SFST appoints 1 October 2019 as the day on which the Financial Reporting Council (Amendment) Ordinance 2019 (Ord. No. 3 of 2019) ("FRCAO"), except sections 62 and 85 (concerning payment and calculation of levies payable to the Financial Reporting Council ("FRC") by specified parties), comes into operation. SFST also appoints 1 January 2022 as the day on which sections 62 and 85 of FRCAO come into operation.

20. FRCAO, published in the Gazette on 15 February 2019, amends the Financial Reporting Council Ordinance (Cap. 588) to, among others, enhance the independency of the regulatory regime for auditors of listed entities ("ALEs"); regulate ALEs through registration, recognition, inspection, investigation and disciplinary sanction; provide for a review and appeal mechanism regarding decisions made against ALEs; provide for the new composition and functions of FRC; and provide for levies payable to FRC.

21. No LegCo Brief has been issued in respect of L.N. 80. According to paragraph 4 of the letter issued by the Administration to the Clerk to House Committee on 14 May 2019 (LC Paper No. CB(2)1510/18-19(01)), the Financial Secretary announced in the 2019-20 Budget that he had decided to exempt the levies payable to FRC for the first two years upon the implementation of the new regime.²

22. In response to LSD's enquiries, the Administration clarified that FRC is preparing the guidelines for the exercise of its power to impose pecuniary penalty³ ("guidelines") to be published under the new section 37H of Cap. 588. FRC will publish the finalized guidelines (which are not subsidiary legislation) in the Gazette before the commencement of FRCAO (i.e. 1 October 2019).

23. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 80. During the scrutiny of the Financial Reporting Council (Amendment) Bill 2018, the relevant Bills Committee has deliberated on issues including the composition, financial arrangement, functions and powers of the post-reform FRC, and the pecuniary penalty on auditors of public interest entities and their responsible persons. Members may refer to the report of the Bills Committee on the Bill (LC Paper No. CB(1)467/18-19) for further details.

Concluding observation

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

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² Please refer to paragraph 44 of the Speech by the Financial Secretary for moving the Second Reading of the Appropriation Bill 2019.

³ Under the new sections 37D(3)(b)(iv) and 37E(3)(b)(iii) of Cap. 588, FRC may order a person who is or was an auditor of a public interest entity ("PIE auditor") or a registered responsible person of a registered PIE auditor and has committed a misconduct to pay a pecuniary penalty. The maximum pecuniary penalty is the greater of \$10 million, or three times the amount of the profit gained or loss avoided by the person as a result of the misconduct.