

**立法會**  
***Legislative Council***

LC Paper No. LS80/18-19

**Paper for the House Committee Meeting  
on 11 October 2019**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 28 June 2019**

**Tabling in LegCo** : Council meeting of 16 October 2019

**Amendment to be made by** : Council meeting of 13 November 2019 (or that of 4 December 2019 if extended by resolution)

**Banking (Liquidity) (Amendment) Rules 2019** (L.N. 84)

An authorized institution ("AI"), namely, a bank, restricted licence bank or deposit-taking company, is required to comply with the liquidity requirements set out in the Banking (Liquidity) Rules (Cap. 155Q). Under Cap. 155Q, AI designated by the Monetary Authority ("MA") as a category 1 institution must comply with the requirements relating to liquidity coverage ratio ("LCR")<sup>1</sup> and net stable funding ratio ("NSFR")<sup>2</sup>. AI that is not a category 1 institution is regarded as a category 2 institution under Cap. 155Q. A category 2 institution is obliged to comply with the requirements relating to liquidity maintenance ratio ("LMR")<sup>3</sup>. A category 2 institution which is designated by MA as a category 2A institution must comply with the requirements relating to core funding ratio ("CFR")<sup>4</sup>.

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<sup>1</sup> In calculating LCR of a category 1 institution, Cap. 155Q provides that the value of the institution's high quality liquid assets, which comprise, among others, level 2B assets, has to be included.

<sup>2</sup> In calculating NSFR of a category 1 institution, Cap. 155Q requires that the amount of the institution's required stable funding has to be included, which is determined by reference to the relevant requirements such as required stable funding factors.

<sup>3</sup> In calculating LMR of a category 2 institution, Cap. 155Q states that the value of institution's liquefiable assets has to be taken into account, and Cap. 155Q prescribes requirements for assets which can be included as liquefiable assets.

<sup>4</sup> In calculating CFR of a category 2A institution, Cap. 155Q stipulates that the amount of the institution's required core funding has to be included, which is worked out by reference to the relevant requirements such as required core funding factors.

2. L.N. 84 is made by MA under section 97H of the Banking Ordinance (Cap. 155) to amend Cap. 155Q after consultation with the Financial Secretary, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies. Its main purpose is to bring Cap. 155Q in line with the standards set by the Basel Committee on Banking Supervision ("BCBS").

3. The major amendments in L.N. 84 are:

- (a) recognizing marketable debt securities of specified ratings issued by corporates, sovereigns, central banks or public sector entities as level 2B assets in calculating a category 1 institution's LCR and as liquefiable assets in calculating a category 2 institution's LMR (e.g. rules 17(22) and 20(5) of L.N. 84);
- (b) including listed ordinary shares meeting certain qualifying criteria such as being constituents of the Hang Seng Index as level 2B assets in calculating a category 1 institution's LCR and as liquefiable assets in calculating a category 2 institution's LMR (e.g. rules 17(9) and 20(13) of L.N. 84);
- (c) implementing a required stable funding factor of 5% on total derivative liabilities (before adjustments) in calculating a category 1 institution's NSFR (e.g. rule 21(8) of L.N. 84); and
- (d) implementing a required core funding factor of 5% on total derivative liabilities (before adjustments) in calculating a category 2A institution's CFR (e.g. rule 21(16) of L.N. 84).

4. As stated in paragraph 11 of the Legislative Council ("LegCo") Brief issued by the Financial Services and the Treasury Bureau and Hong Kong Monetary Authority ("HKMA") (File Ref: B&M/2/1/63C) dated 26 June 2019, HKMA has closely engaged the banking industry in formulating the legislative amendments and conducted statutory consultation as required under Cap. 155. According to the Administration, the banking industry is receptive to the amendments, save for some enquiries on interpretation of certain provisions and calculation requirements. HKMA has responded to those enquiries and the finalized rules have been modified accordingly as appropriate.

5. As advised by the Clerk to the Panel on Financial Affairs, at the meeting on 19 February 2019 when the Panel received a briefing on the work of HKMA, members were informed of HKMA's plan of amending Cap. 155Q to implement relevant Basel III standards promulgated by BCBS. Members had no objection to the plan.

6. L.N. 84 comes into operation on 1 January 2020.

7. The Legal Service Division ("LSD") has enquired with the Administration on the Chinese text for "the scale of credit quality grades" in the new section 7(1)(bb) of Part 3 of Schedule 2 to Cap. 155Q, as added by rule 17(22) of L.N. 84. In reply, the Administration agreed that the Chinese text should be "信用質素等級表" instead of "信用質素評級表". The Administration stated that the error will be corrected when the next suitable opportunity arises. LSD considers that the error is unlikely to cause any interpretation difficulties.

**Private Healthcare Facilities Ordinance (Commencement)  
Notice 2019** (L.N. 85)

**Private Healthcare Facilities Ordinance (Amendment of  
Schedule 3) Notice 2019** (L.N. 86)

**Private Healthcare Facilities Ordinance (Specification of  
Period for Section 125(1)(c)) Notice** (L.N. 87)

**Private Healthcare Facilities Ordinance (Specification of  
Period for Section 126(1)(c)) Notice** (L.N. 88)

**Private Healthcare Facilities Ordinance (Specification of  
Period for Section 128(3)(a)) Notice** (L.N. 89)

**Private Healthcare Facilities Ordinance (Specification of  
Period for Section 135(1)(b)) Notice** (L.N. 90)

### Background

8. The Private Healthcare Facilities Ordinance (Cap. 633) was published in the Gazette as Ord. No. 34 of 2018 on 30 November 2018 following the passage of the Private Healthcare Facilities Bill ("the Bill") by LegCo on 15 November 2018. It provides for a new regulatory regime for four types of private healthcare facilities ("PHFs"), namely, hospitals, day procedure

centres ("DPCs"), clinics and health services establishments ("HSEs"). A Bills Committee was formed to study the Bill ("the Bills Committee"). Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)209/18-19) for further information.

9. Under section 1(2) of Cap. 633, Cap. 633 comes into operation on a day to be appointed by the Secretary for Food and Health ("the Secretary") by notice published in the Gazette.

10. According to section 2 of Cap. 633, a scheduled medical procedure means a medical procedure that is described in column 2 of Schedule 3 to Cap. 633 ("Schedule 3") that is carried out in an ambulatory setting, subject to the exceptions described in column 3 of that Schedule. Column 1 of Schedule 3 set outs the classes of specialized services to which those medical procedures relate. Pursuant to section 5 of Cap. 633, any premises that are used, or intended to be used, for carrying out scheduled medical procedures on patients without lodging are DPCs, if other conditions are met.<sup>5</sup> Currently, Schedule 3 sets out seven classes of specialized services with the corresponding medical procedures. Pursuant to section 123 of Cap. 633, the Secretary may, by notice published in the Gazette, amend Schedule 3.

11. Sections 125, 126, 128 and 135 of Cap. 633 contain transitional arrangements for existing operators of private hospitals, scheduled nursing homes<sup>6</sup> and DPCs respectively. Under those sections, the Director of Health ("the Director") may, by notice published in the Gazette, specify a period for the application of these transitional arrangements.

## L.N. 85

12. L.N. 85 is made by the Secretary under section 1(2) of Cap. 633 to appoint 2 July 2019, 2 January 2020 and 1 January 2021 as the days on which certain provisions of Cap. 633 come into operation. In gist:

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<sup>5</sup> Section 5 of Cap. 633 provides:

"A day procedure centre is any premises-

- (a) that do not form part of the premises of a hospital; and
- (b) that are used, or intended to be used, for carrying out scheduled medical procedures on patients, without lodging, whether or not the premises are also used, or intended to be used, for-
  - (i) providing medical services to patients, without lodging; or
  - (ii) carrying out minor medical procedures on patients, without lodging."

<sup>6</sup> A scheduled nursing home, pursuant to section 2 of Cap. 633, means a nursing home listed in Schedule 10 to Cap. 633 for which a certificate of registration of a nursing home issued under section 3 of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) is valid as at 1 April 2017.

- (a) the provisions that came into operation on 2 July 2019 (including sections 61, 62, 122, 123, 125 and 126) relate to matters including the application procedure for licences for hospitals, various obligations and complaint mechanism relating to hospitals, certain transitional arrangements for existing operators of hospitals and scheduled nursing homes, administration, enforcement and miscellaneous matters, interpretation matters including the relevant Schedules (such as Schedule 3), and the amendment made to the Administrative Appeals Board Ordinance (Cap. 442);
- (b) the provisions that come into operation on 2 January 2020 (including sections 128 and 135) relate to matters including the application procedure for licences for DPCs, various obligations and complaint mechanism relating to DPCs, certain transitional arrangements for existing operators of DPCs and scheduled nursing homes, and the amendments made to the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) and its subsidiary legislation; and
- (c) the provisions that come into operation on 1 January 2021 relate to the offence of operating a hospital without a licence, the repeal of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) and the relevant consequential amendments made to other legislation under Cap. 633.

13. Sections 61 and 62, together with section 122, of Cap. 633, which came into operation on 2 July 2019 pursuant to L.N. 85, empowers the Secretary to make regulations providing for the requirements relating to disclosure by licensees of PHFs or hospitals of certain price information and budget estimate to patients. In response to LSD's enquiry on when such regulations will be made, the Administration stated that they are now working on the details of the proposed regulations in consultation with stakeholders with a view to submitting the relevant regulations to LegCo for scrutiny in early 2020.

14. The provisions of Cap. 633 that have not been brought into operation by L.N. 85 relate to regulation of clinics, certain offence provisions, regulation of HSEs and consequential amendments to other legislation following the repeal of the Medical Clinics Ordinance (Cap. 343). According to paragraph 3 of the LegCo Brief (File Ref: FHB/H/53/6) issued by the Food and Health Bureau dated 26 June 2019, the applications for licences and requests for letters of exemption for clinics would commence in 2021 at the

earliest. As stated in paragraph 5 of the LegCo Brief, the provision on the offence of operating DPC without a licence will be brought into operation on a date to be confirmed, when the Administration considers that both the public and stakeholders are ready for the regulation pertaining to DPCs. In respect of other uncommenced provisions, LSD has enquired with the Administration when they will be brought into operation. The Administration's reply is summarized as follows:

- (a) the provisions on HSEs will commence at a later stage as the Administration wishes to deal with the registration of private hospitals, DPCs and clinics first;
- (b) the provisions prohibiting the use of certain titles or descriptions and prohibiting persons who are not healthcare professionals from performing on premises, other than excepted premises, medical treatments or medical procedures causing personal injury to another person will be put in force when the Administration considers that both the public and stakeholders are ready for full-scale regulation of the types of PHFs concerned; and
- (c) certain consequential amendments are anticipated to take effect upon the repeal of Cap. 343 in 2022 at the earliest.

#### L.N. 86

15. L.N. 86 is made by the Secretary under section 123 of Cap. 633 to add radiotherapy in column 1 of Schedule 3 and three corresponding medical procedures (i.e. external beam radiotherapy, brachytherapy and radionuclide therapy) in column 2 of that Schedule. The effect of L.N. 86 is that subject to meeting other conditions, premises that are used, or intended to be used, for carrying out those medical procedures on patients without lodging would be DPC and a person operating such a centre is required to obtain a licence under Cap. 633.

16. L.N. 86 comes into operation on the day on which section 123 of Cap. 633 comes into operation (i.e. 2 July 2019).

#### L.N. 87

17. L.N. 87 is made by the Director under section 125(7) of Cap. 633 to specify the period between 2 July 2019 and 31 December 2019 as the period for the application of the transitional arrangement for an existing operator of a private hospital. The effect of L.N. 87 is that when Cap. 633 (including

section 125) comes into operation, if a person holding a valid certificate of registration of a hospital issued under section 3 of Cap. 165 applies for a licence to operate a hospital under Cap. 633 within the period specified by L.N. 87, the person may only apply for a single licence for the main hospital and certain premises associated with the main hospital that are covered by the certificate as one single PHF. In addition, the application fee to be paid will be the same as the fee for renewing a licence for a hospital under Cap. 633.

18. L.N. 87 comes into operation on the day on which section 125 of Cap. 633 comes into operation (i.e. 2 July 2019).

#### L.N. 88

19. L.N. 88 is made by the Director under section 126(3) of Cap. 633 to specify the period between 2 July 2019 and 31 December 2019 as the period for the application of the transitional arrangement for an existing operator of a scheduled nursing home. The effect of L.N. 88 is that when Cap. 633 (including section 126) comes into operation, if a person holding a valid certificate of registration in relation to a scheduled nursing home issued under section 3 of Cap. 165 applies for a licence to operate a hospital under Cap. 633 within the period specified by L.N. 88, the application fee to be paid will be the same as the fee for renewing a licence for a hospital under Cap. 633.

20. L.N. 88 comes into operation on the day on which section 126 of Cap. 633 comes into operation (i.e. 2 July 2019).

#### L.N. 89

21. L.N. 89 is made by the Director under section 128(7) of Cap. 633 to specify the period between 2 January 2020 and 30 April 2020 as the period for the application of the transitional arrangement for an existing operator of a scheduled nursing home (i.e. a person holding a certificate of registration issued under section 3 of Cap. 165 in relation to the scheduled nursing home) who has applied for, but has not been granted, a licence under Cap. 459, the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) or Cap. 633. The effect of L.N. 89 is that the operator concerned may, within the period specified by L.N. 89, apply to the Director for an exemption permitting him to operate the nursing home on the premises without a licence.

22. L.N. 89 comes into operation on the day on which section 128 of Cap. 633 comes into operation (i.e. 2 January 2020).

## L.N. 90

23. L.N. 90 is made by the Director under section 135(6)(b) of Cap. 633 to specify the period between 2 January 2020 and 30 April 2020 for the application of the transitional arrangement for an existing operator of DPC. The effect of L.N. 90 is that if a person operating DPC on 30 November 2018<sup>7</sup> applies for a licence to operate DPC under Cap. 633 within the period specified by L.N. 90, the Director must issue a provisional DPC licence for the centre to such person if certain conditions are satisfied. This would permit such person to operate such DPC on the premises pending the Director's decision on the application for a licence under Cap. 633.

24. L.N. 90 comes into operation on the day on which section 135 of Cap. 633 comes into operation (i.e. 2 January 2020).

## Consultation with LegCo

25. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 85 to L.N. 90.

26. As advised by the Clerk to the Bills Committee, the Bills Committee noted, in the course of studying the Bill, that the Administration would review and amend the list of scheduled medical procedures under the new regulatory regime as and when necessary.

27. According to the Clerk to the Subcommittee formed to study the Private Healthcare Facilities Ordinance (Specification of Date for Section 135(1)(a)) Notice and Private Healthcare Facilities Ordinance (Specification of Date for Section 136(1)(a)) Notice ("the Subcommittee"), the Subcommittee noted, during the scrutiny of these two notices, the Administration's plan that applications for hospital licences and DPC licences might be made as from mid-2019 and 2020 respectively, and that the hospital licences and the first batch of DPC licences so issued would take effect in early 2021. The

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<sup>7</sup> By the Private Healthcare Facilities Ordinance (Specification of Date for Section 135(1)(a)) Notice (L.N. 261 of 2018) ("the Notice"), the Director specifies 30 November 2018 as the date on which a person who operates DPC is eligible for a provisional DPC licence. The Notice comes into operation on 2 January 2020. A subcommittee was formed to study the Notice, together with another notice relating to clinics (i.e. Private Healthcare Facilities Ordinance (Specification of Date for Section 136(1)(a)) Notice (L.N. 262 of 2018)) made by the Director ("the Subcommittee"). Members may refer to the Report of the Subcommittee (LC Paper No. CB(2)675/18-19) for further information.



Subcommittee also noted that provisions under Cap. 633 in relation to the prohibition against operating a type of PHF without a licence and other related offences would be put in force when the Administration considered that both members of the public and the stakeholders were ready for full-scale regulation of the type of PHFs. Members of the Subcommittee generally supported the above plan but raised concerns on certain issues, including the Administration's target processing times for different stages of licence applications, and the readiness of the premises of the existing DPCs to meet the relevant standards under the new regulatory regime.

### **Concluding Observations**

28. Subject to Members' view on the issue mentioned in paragraph 7, no difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

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