

立法會
Legislative Council

LC Paper No. LS65/19-20

**Paper for the House Committee Meeting
on 8 May 2020**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 April 2020**

Tabling in LegCo	: Council meeting of 22 April 2020
Amendment to be made by	: Council meeting of 20 May 2020 (or that of 10 June 2020 if extended by resolution)
Road Tunnels (Government) Ordinance (Amendment of Schedule 1) Notice 2020	(L.N. 34)
Road Tunnels (Government) (Amendment) Regulation 2020	(L.N. 35)
Road Traffic (Public Service Vehicles) (Amendment) Regulation 2020	(L.N. 36)
Tsing Ma Control Area (Tolls, Fees and Charges) (Amendment) Regulation 2020	(L.N. 37)
Tsing Ma Control Area (General) (Amendment) Regulation 2020	(L.N. 38)

L.N. 34 to L.N. 38 are made in connection with the planned commissioning of the Tuen Mun-Chek Lap Kok Tunnel ("TM-CLKT") and the Tseung Kwan O-Lam Tin Tunnel ("TKO-LTT") by the end of 2020 at the earliest and by the end of 2021 respectively. L.N. 35 to L.N. 38 also implement the proposal announced by the Chief Executive ("CE") in the 2019 Policy Address to waive the tolls of the Lantau Link and the Tseung Kwan O Tunnel upon the commissioning of TM-CLKT and TKO-LTT respectively.¹

L.N. 34

2. L.N. 34 is made by CE under section 3 of the Road Tunnels (Government) Ordinance (Cap. 368) after consultation with the Executive Council. It adds TM-CLKT and TKO-LTT to Schedule 1 to Cap. 368, with the effect that the current regulatory regime for Government road tunnels in Cap. 368 applies to these two new tunnels.

¹ Please refer to paragraph 41 of the 2019 Policy Address.

L.N. 35

3. L.N. 35 is made by CE in Council under section 20 of Cap. 368. It amends regulation 11 of, and Parts 1, 4 and 5 of Schedule 2 to, the Road Tunnels (Government) Regulations (Cap. 368A):

- (a) to permit certain vehicles to carry diesel oil in TM-CLKT for a specified purpose;
- (b) to provide for the removal fee for TM-CLKT and TKO-LTT (for removing a vehicle or thing that causes an obstruction in the tunnel) at the same rates currently applicable to other existing government road tunnels (i.e. \$140, \$175 or \$215, depending on the type of vehicle);
- (c) to provide for the permit fee for TM-CLKT and TKO-LTT (for the issue of a permit for the passage of certain vehicles) at the same rate currently applicable to other existing government road tunnels (i.e. \$82); and
- (d) to provide for the use of the Tseung Kwan O Tunnel without payment of any toll.

L.N. 36

4. L.N. 36 is made by CE in Council under section 7(1C) of the Road Traffic Ordinance (Cap. 374). It amends Schedule 5 to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) to the effect that no additional fare is required to be paid for a hiring of a taxi involving the use of the Tseung Kwan O Tunnel or the Lantau Link.

L.N. 37

5. L.N. 37 is made by CE in Council under section 27(1) and (3) of the Tsing Ma Control Area Ordinance (Cap. 498). It repeals provisions under the Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap. 498A) that relate to the imposition and collection of tolls, and the related surcharges and administration fees, for the use of the Lantau Link by all vehicles. It also removes the reference to "Tolls" in the title of Cap. 498A as a consequential amendment.

L.N. 38

6. L.N. 38 is made by the Secretary for Transport and Housing ("STH") under section 27(2) of Cap. 498. It makes consequential amendments to the Tsing Ma Control Area (General) Regulation (Cap. 498B) in view of the making of L.N. 37, including repealing the provisions of Cap. 498B relating to

toll collection or toll collection facilities in connection with the use of the Lantau Link, and amending the references in Cap. 498B to the title of Cap. 498A as amended by L.N. 37.

Consultation with LegCo

7. As advised by the Clerk to the Panel on Transport, the Panel was briefed on 25 October 2019 on the 2019 Policy Address initiatives in relation to transport when the proposed toll waiver of the Lantau Link and the Tseung Kwan O Tunnel, as well as the necessary legislative amendments to put the two new toll-free tunnels, namely, TM-CLKT and TKO-LTT, under the regulatory regime of Cap. 368 were explained. Members in general welcomed the proposals and did not raise any objection.

Commencement

8. Provisions relating to TM-CLKT in L.N. 34 and L.N. 35 respectively come into operation on 1 July 2020. The remaining provision in L.N. 34 (i.e. the provision relating to TKO-LTT), the remaining provisions in L.N. 35 (i.e. the provisions relating to TKO-LTT and the Tseung Kwan O Tunnel), L.N. 36, L.N. 37 and L.N. 38 come into operation on a day to be appointed by STH by notice published in the Gazette.

**Road Traffic (Construction and Maintenance of Vehicles)
(Amendment) Regulation 2020 (L.N. 39)**

**Road Traffic (Public Service Vehicles) (Amendment) (No. 2)
Regulation 2020 (L.N. 40)**

L.N. 39

9. L.N. 39 is made by STH under section 9 of Cap. 374. It amends the First Schedule to the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) to increase the maximum overall length specified for a light bus from 7 to 7.5 metres. It also amends Part I of the Second Schedule to Cap. 374A to increase the maximum gross vehicle weight specified for a light bus from 5.5 to 8.5 tonnes. Any person who uses, causes or permits to be used on any road a light bus which does not comply with any of these requirements commits an offence and is liable on conviction to a fine at level 3 (i.e. \$10,000) and to imprisonment for six months.

10. As stated in paragraph 5 of LegCo Brief (File Ref: THB(T)L 3/2/4) issued by the Transport and Housing Bureau on 14 April 2020, the Administration increases the above maximum overall length in order to allow light buses with more environmental benefits and barrier-free facilities to be

introduced into Hong Kong. According to paragraph 9 of the LegCo Brief, the Administration increases the above maximum gross vehicle weight so that the relevant legal requirements would be able to accommodate light buses of longer length as well as electric light buses.

L.N. 40

Requirements relating to a destination indicator

11. Currently under regulation 50(1) and (2) of Cap. 374D, a driver of a public light bus must ensure that there is displayed at the front of the vehicle a destination indicator which must clearly indicate the destination of the vehicle in English and Chinese. Pursuant to Schedule 6 to Cap. 374D, those English letters and the Chinese characters must be in white and, depending on the area where the public light bus is operating, on a dark blue, green, yellow or red background.² Any person who without reasonable excuse contravenes any of these requirements commits an offence punishable with a fine at level 1 (i.e. \$2,000).

12. L.N. 40, made by STH under section 7 of Cap. 374, amends regulation 50(1) and (2) of, and Schedule 6 to, Cap. 374D to the effect that:

- (a) for a destination indicated by means of a roller blind, the English letters and Chinese characters must be in white on any of the background colours currently allowed (i.e. on a dark blue, green, yellow or red background), whereas for a destination indicated by any other means, the English letters and Chinese characters must be in yellow or amber on a dark non-reflective background; and
- (b) a destination indicator must indicate the destination of the public light bus in a clearly visible and legible manner.

Requirements relating to a fare card

13. At present, pursuant to regulation 50(3) and (4) of Cap. 374D, a driver of a public light bus must ensure that there is displayed at the front of the vehicle a fare card which must indicate the fare in English and Chinese in red letters and characters on a white background. Any person who without

² The background colour of a destination indicator on a public light bus must be (a) dark blue for any route on Hong Kong Island (other than a cross-harbour route), (b) green for any route which terminates in Kowloon and New Kowloon (other than a cross-harbour route), (c) yellow for any route which terminates in the New Territories (other than a cross-harbour route), or (d) red for any route which operates through the Cross-Harbour Tunnel.

reasonable excuse contravenes any of these requirements commits an offence punishable with a fine at level 1 (i.e. \$2,000).

14. L.N. 40 amends regulation 50(4)(b) of Cap. 374D to the effect that a fare card must indicate the fare in Arabic numerals with the dollar sign ("\$\$") without any specific requirement on the colours of the numerals and background.

Consultation

15. According to paragraph 22 of the LegCo Brief, the public light bus trades were consulted on the amendments and they generally welcomed the amendments. As mentioned in paragraph 23 of the LegCo Brief, views of the Transport Advisory Committee members were sought and they were either generally supportive or had no adverse comment on the amendments.

16. As advised by the Clerk to the Panel on Transport, the Panel was consulted on 20 March 2020 on the proposals and Members did not raise any objection to the proposals. During discussion at the meeting, a few members expressed concern over the impact of the longer light buses on parking needs at stations and requested the Administration to expedite the modification works to light bus termini, relevant road sections and public transport interchanges to cater for the longer vehicle length.

Commencement

17. L.N. 39 and L.N. 40 come into operation on 5 July 2020.

Pharmacy and Poisons (Amendment) (No. 2) Regulation 2020 (L.N. 41)

18. L.N. 41 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 six items of substances³ ("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").

19. The effect of L.N. 41 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

³ The six items are: (a) Burosumab; (b) Entrectinib; its salts; (c) Lisdexamfetamine; its salts; (d) Lutetium (177Lu) oxodotreotide; its salts; (e) Polatuzumab vedotin; and (f) Prasterone; its salts; when contained in pharmaceutical products.

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.

20. According to paragraph 4 of LegCo Brief (File Ref: FHB/H/23/4) issued by the Food and Health Bureau in April 2020, 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.

21. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 41.

22. L.N. 41 came into operation on the date of publication in the Gazette, i.e. 17 April 2020.

**Inland Revenue Ordinance (Amendment of Section 50A)
Notice 2020 (L.N. 42)**

**Inland Revenue Ordinance (Amendment of Schedule 17D)
Notice 2020 (L.N. 43)**

L.N. 42

23. The legal framework for implementing automatic exchange of financial account information in tax matters ("AEOI") in Hong Kong is provided under the Inland Revenue Ordinance (Cap. 112). Reporting financial institutions ("FIs"), such as banks and securities firms, are required, among others, to conduct due diligence procedures to identify financial accounts held by tax residents of reportable jurisdictions. Pursuant to section 50A(6)(b)(i)(A) and (B) of Cap. 112, the identification of the controlling person of a partnership for the purpose of AEOI is applicable to an individual who is entitled to or controls, directly or indirectly, more than the specified percentage of the capital or profits of the partnership, or of the voting rights in the partnership. Under section 50A(6)(c)(i) of Cap. 112, the identification of the controlling person of a trust for the purpose of AEOI is applicable to an individual who is entitled to a vested interest in more than the specified percentage of the capital of the property of the trust. Section 50A(7) of Cap. 112 currently provides that the specified percentage is 25%.

24. L.N. 42 is made by the Secretary for Financial Services and the Treasury ("SFST") under section 50A(16A)(b) of Cap. 112. It amends section 50A(7) of Cap. 112 to the effect that the specified percentage applicable to a partnership or a trust is to be reduced from 25% to 0%. The specified percentage relating to an entity that is a corporation remains unchanged at 25%.

25. According to paragraph 4 of the LegCo Brief (File Ref: TsyB R2 183/800-3/3/0(C)) issued by the Financial Services and the Treasury Bureau on 15 April 2020, the amendment to the threshold applicable to a partnership is made in order to adopt the recommendation made in the latest round of assessment conducted by the Organization for Economic Co-operation and Development ("OECD") in relation to the application of the Standard for Automatic Exchange of Financial Account Information in Tax Matters. As to the amendment to the threshold applicable to a trust, the amendment is made for the sake of completeness to align with section 50A(6)(c)(ii) to (vi) of Cap. 112.⁴

L.N. 43

26. Section 5 of Part 6 of Schedule 17D to Cap. 112 currently provides that a reporting FI may, for the purpose of determining the controlling persons of an account holder of a new entity account, rely on information collected and maintained pursuant to AML/KYC procedures (i.e. the customer due diligence procedures required to be carried out by a reporting FI pursuant to any anti-money laundering requirements or similar requirements (including requirements to know a customer) to which the reporting FI is subject).

27. L.N. 43, made by SFST under section 50J of Cap. 112, amends section 5 of Part 6 of Schedule 17D to Cap. 112 to provide that AML/KYC procedures may be relied upon by a reporting FI if those procedures are consistent with Recommendations 10 and 25 of the FATF Recommendations (i.e. the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations, as adopted by the Financial Action Task Force Plenary in February 2012 incorporating updates made up to February 2018).⁵

28. According to paragraph 5 of the LegCo Brief, the amendment in L.N. 43 is made in view of the recommendation from OECD for enhancing legislative clarity.

⁴ Under section 50A(6)(c)(ii) to (vi) of Cap. 112 as amended by the Inland Revenue (Amendment) (No. 2) Ordinance 2019, all controlling persons, regardless of the stake held, have to be identified by the reporting FIs.

⁵ According to footnote 3 of the LegCo Brief, the FATF Recommendations set out a comprehensive and consistent framework of measures which jurisdictions should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Recommendation 10 sets out the customer due diligence measures that FIs are required to undertake. Recommendation 25 sets out the requirement in relation to transparency and beneficial ownership of legal arrangements.

Consultation

29. As stated in paragraph 11 of the LegCo Brief, the Administration issued letters to relevant stakeholders from the financial, business, accounting and legal sectors in November 2019 to brief them on the OECD's recommendations and to seek their views on the proposed amendments. According to the Administration, most of the submissions received indicate no objection or no comment towards the way forward.

30. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed at its meeting on 17 March 2020 on the Administration's proposals to implement the recommendations of OECD regarding Hong Kong's legislative framework on AEOI. Members had no objection to the proposals and discussed issues including the impact of the proposals on the compliance cost of reporting FIs and how the controlling persons of partnerships and trusts would be determined upon the removal of the existing 25% threshold applicable to partnerships and trusts.

Commencement

31. L.N. 42 and L.N. 43 come into operation on 1 January 2021.

Concluding observations

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

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