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Legislative Council

LC Paper No. LS83/19-20

**Paper for the House Committee Meeting
on 29 May 2020**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 22 May 2020**

Tabling in LegCo : Council meeting of 27 May 2020

Amendment to be made by : Council meeting of 24 June 2020 (or that of 15 July 2020 if extended by resolution)

**PART I ARBITRATION (PARTIES TO NEW YORK CONVENTION)
ORDER (CAP. 609A)**

**Arbitration (Parties to New York Convention) (Amendment)
Order 2020**

(L.N. 83)

L.N. 83 is made by the Chief Executive ("CE") in Council under section 90 of the Arbitration Ordinance (Cap. 609). It amends the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609A) to incorporate five additional States (i.e. Cabo Verde, Maldives, Papua New Guinea, Seychelles, and Sudan) which have acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 ("New York Convention"). L.N. 83 also updates the name of a party to the New York Convention (from "The former Yugoslav Republic of Macedonia" to "North Macedonia"), and makes a textual amendment to the Chinese text relating to Australia in the Schedule to Cap. 609A.

2. Under section 90(2) of Cap. 609, Cap. 609A (while in force) is conclusive evidence that the States or territories stated in its Schedule are parties to the New York Convention. An arbitral award made in any of these States or territories, other than China or any part of China,¹ is recognized and enforceable in the Hong Kong Special Administrative Region ("HKSAR") under section 87 of Cap. 609.

3. According to paragraph 6 of the Legislative Council ("LegCo") Brief (File Ref: LP 19/00/3C) issued by the Department of Justice on 20 May 2020, an updated list of parties under the Schedule to Cap. 609A would facilitate Hong Kong courts in

¹ See section 92 (for enforcement of Mainland awards as defined by Cap. 609) and section 98A (for enforcement of Macao awards as defined by Cap. 609).

identifying a State or territory which is a contracting party to the New York Convention for the purposes of recognition and enforcement of arbitral awards made in such a contracting party (instead of having to rely on the relevant evidence submitted by the applicant seeking to enforce the award which may cause delay and incur unnecessary costs). It is therefore necessary to update the Schedule to Cap. 609A to reflect the changes to the list of parties to the New York Convention in a timely manner.

4. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 83.

5. L.N. 83 comes into operation on 24 July 2020.

PART II DOUBLE TAXATION RELIEF

Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Macao Special Administrative Region) Order

(L.N. 84)

6. Under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), CE in Council may, by order, declare that the arrangements specified in the order have been made with the government of any territory outside Hong Kong for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

7. L.N. 84 is made by CE in Council under section 49(1A) of Cap. 112 to give effect to the Arrangement between HKSAR and the Macao Special Administrative Region ("Macao") for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("HK/Macao Arrangement") done in November 2019 together with its Protocol ("Protocol").

8. According to paragraph 4 of the LegCo Brief (File Ref: TsyB R2 183/800-1-1/30/0 (C)) issued by the Financial Services and the Treasury Bureau ("FSTB") on 20 May 2020, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a jurisdiction outside Hong Kong taxes its residents' income derived from Hong Kong. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax paid on income derived therefrom, comprehensive avoidance of double taxation arrangements ("CDTAs") will enhance the certainty in respect of the elimination of double taxation. Besides, the tax relief available under CDTAs may exceed the level provided unilaterally by the jurisdictions concerned.

9. For the purposes of section 49(1A) of Cap. 112, L.N. 84 declares that the arrangements in Articles 1 to 29 of the HK/Macao Arrangement and the Protocol have

been made for the purposes of affording relief from double taxation and exchanging information in relation to any tax imposed by the laws of Hong Kong or Macao, and that it is expedient that those arrangements should have effect.

10. The provisions in the HK/Macao Arrangement set out the allocation of taxing rights between Hong Kong and Macao and the relief on tax rates on different types of income. The HK/Macao Arrangement includes a Teachers and Researchers Article (Article 20). Under that Article, if an individual employed by a recognized educational institution of Hong Kong visits and stays in Macao for the primary purpose of teaching at a recognized educational institution of Macao, then his/her remuneration for such teaching, to the extent it is paid by or on behalf of his/her Hong Kong employer, shall be exempt from tax in Macao for a period not exceeding three years, provided that such remuneration is subject to tax in Hong Kong. According to paragraph 11 of the LegCo Brief, Article 20 would reduce the tax burden of eligible teachers and researchers who work across the boundary and, in particular, facilitate co-operation in research and development in the Greater Bay Area.

11. The HK/Macao Arrangement also contains an article on exchange of information which is based on the Organisation for Economic Co-operation and Development ("OECD") 2004 version of the Exchange of Information ("EoI") Article. A sample EoI Article was presented to the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009 vide LC Paper No. CB(1)466/09-10(02). While the EoI arrangements under the HK/Macao Arrangement are consistent with those under the sample EoI Article in certain aspects (such as requested information must be foreseeably relevant and information received under the HK/Macao Arrangement shall be treated as secret), the Legal Service Division ("LSD") notes that the scope of disclosure and use of information under the HK/Macao Arrangement are different from the sample EoI Article in the following aspects:

- (a) information may be disclosed to oversight bodies; and
- (b) information obtained under the HK/Macao Arrangement may be used for non-tax related purposes if such purposes are allowed under the laws of both Hong Kong and Macao and the tax authority of the supplying party authorizes such use.

12. According to paragraph 13(c) and footnote 3 of the LegCo Brief, in relation to the disclosure of information to the oversight bodies of the tax authorities concerned, the HK/Macao Arrangement follows the formulation of the Convention on Mutual Administrative Assistance in Tax Matters, which was promulgated by OECD and entered into force in respect of Hong Kong and Macao in September 2018. Macao advised that the oversight bodies of the tax authority in Macao are the Chief Executive and the Secretary for Economy and Finance of Macao.

13. In relation to the use of information for non-tax related purposes, the Administration stated in paragraph 13(f) and footnote 4 of the LegCo Brief that under the laws of Hong Kong, tax information may only be used for limited non-tax related purposes, covering purposes relating to recovery of proceeds from drug trafficking, organized and serious crimes and terrorist acts under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) respectively. Hence, Macao may only use the tax information exchanged under the HK/Macao Arrangement for the said limited non-tax related purposes if it also has similar laws permitting the use of tax information for the same purposes, and if the Commissioner of Inland Revenue (or his authorized representative) authorizes such use. Macao cannot use the tax information exchanged for other purposes even if permitted under their laws because to do so will go beyond the permitted use under the laws of Hong Kong.

14. The effects of the declarations referred to in paragraph 9 above are as follows:

- (a) the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment; and
- (b) the arrangements, for the purposes of any provision of the arrangements that requires disclosure of information concerning tax of Macao, have effect in relation to any tax of Macao that is the subject of that provision.

15. According to paragraph 20 of the LegCo Brief, the business and professional sectors have all along supported FSTB's policy to conclude more CDTAs with the trading and investment partners of Hong Kong.

16. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 84.

17. L.N. 84 comes into operation on 17 July 2020.

PART III PHASING OUT SOME EURO IV DIESEL COMMERCIAL VEHICLES

Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) (Amendment) Regulation 2020 (L.N. 85)

18. L.N. 85 is made by the Secretary for the Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment ("ACE"). It amends the Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation (Cap. 311X) so that certain

designated vehicles ("DVs")² are required to conform to the applicable vehicle design standards as set out in the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311J). The effect of L.N. 85 is to progressively phase out some Euro IV diesel commercial vehicles ("DCVs") from 2022 to 2028,³ depending on the date of first registration of the DCV concerned.

19. The new requirement as stated in L.N. 85 does not apply to an "excluded vehicle", which is defined in section 3(4) of L.N. 85 as a DV that on its date of first registration has complied with the applicable requirements relating to construction and on-board diagnostic system as set out in the relevant provisions of Cap. 311J as in force immediately before 1 October 2020.

20. According to paragraph 15 of the LegCo Brief (no file reference) issued by the Environmental Protection Department ("EPD") in May 2020, the Government proposes to provide owners of Euro IV DCVs with ex-gratia payment involving a one-off non-recurrent funding of about \$7.1 billion, which has been approved by LegCo. The proposed ex-gratia payment for different types of DCVs is set out at Annex E to the LegCo Brief.

21. According to paragraphs 9 and 10 of the LegCo Brief, ACE was briefed on 3 December 2018 and was supportive of the proposal to phase out Euro IV DCVs. The relevant trades including transport operators, vehicle suppliers, vehicle body builders and vehicle scrapping agents were consulted on the proposal between November 2019 and January 2020. While they generally welcomed the ex-gratia payment proposal, some of them requested EPD to exclude those DCVs first registered during the implementation of Euro IV emission standards but constructed to conform with the Euro V emission standards from phasing out. To this end, EPD has considered the trade's request thoroughly and acceded to exclude them from this phasing out exercise as mentioned in paragraph 18 above.

22. As advised by the Clerk to the Panel on Environmental Affairs, the Administration consulted the Panel at the meeting on 22 January 2020 on the proposal of setting age limits for Euro IV DCVs. Members did not raise objection to the proposed age limits for phasing out Euro IV DCVs, and called on the Administration to expedite the implementation of the programme and increase the proposed ex-gratia payment levels for Euro IV heavy-duty lorry cranes. Members also discussed issues relating to retention for leisure purposes of some diesel four-wheel drives which were purchased for personal uses but registered as Euro IV DCVs, after implementation of the programme.

² Under section 2 of Cap. 311X, "designated vehicle" means a motor vehicle equipped with a compression-ignition engine and falling within any of the following classes — (a) a goods vehicle; (b) a light bus; (c) a non-franchised bus.

³ By virtue of section 25(1)(a)(iic) of the Road Traffic Ordinance (Cap. 374), the Commissioner for Transport may refuse to license a motor vehicle if it does not comply with any emission requirement under Cap. 311X or Cap. 311J.

23. L.N. 85 comes into operation on 1 September 2020.

PART IV PROPERTY MANAGEMENT SERVICES

**Property Management Services Ordinance (Commencement)
Notice 2020** (L.N. 86)

**Property Management Services (Licensing and Related
Matters) Regulation** (L.N. 87)

24. The Property Management Services Ordinance (Cap. 626), which was enacted in 2016, provides for the establishment of the Property Management Services Authority ("PMSA") and the control and regulation of the provision of property management services by introducing a licensing regime for property management companies ("PMCs") and property management practitioners ("PMPs"). By L.N. 98 of 2016 and L.N. 29 of 2018, certain provisions relating to the establishment of PMSA and the imposition of levies came into operation on 24 October 2016 and 1 July 2018 respectively.⁴ The uncommenced provisions mainly relate to the control and regulation of property management services, the licensing of PMCs and PMPs, and in particular, the prohibition under section 6(1)(a), (2)(a) and (3)(a) of Cap. 626 against any person acting as a PMC or a PMP without a licence.

25. L.N. 86 is made by the Secretary for Home Affairs ("SHA") under section 1(2) of Cap. 626 to appoint:

- (a) 1 August 2020 as the day on which the uncommenced provisions (except section 6(1)(a), (2)(a) and (3)(a)) of Cap. 626 come into operation; and
- (b) 1 August 2023 as the day on which section 6(1)(a), (2)(a) and (3)(a) of Cap. 626 comes into operation.

26. According to paragraphs 13 and 14 of the LegCo Brief (File Ref: HAD HQ CR/20/3/7(C) Pt. 40) issued by the Home Affairs Bureau ("HAB"), the Home Affairs Department and PMSA in May 2020, the deferred commencement of section 6(1)(a), (2)(a) and (3)(a) of Cap. 626 is to allow a transitional period for PMCs and PMPs to apply for the respective licences. The three-year transitional period proposed by the Administration was noted by the Bills Committee on the Property Management Services Bill during its deliberations. Members may refer to the report of the Bills Committee (LC Paper No. CB(2)701/15-16) for further details.

27. L.N. 87 is a new regulation made by PMSA under sections 3(1), 15(1), 16(3), 17(2) and 47(8) of, and section 5(1) of Schedule 4 to, Cap. 626. L.N. 87 contains

⁴ See LC Papers Nos. LS57/15-16 and LS37/17-18 for further details.

14 sections and four Schedules, and provides for the following matters relating to the control and regulation of property management services and the licensing of PMCs and PMPs:

- (a) the types of property management services falling within the seven categories of services set out in Schedule 1 to Cap. 626 (e.g. general management services, management of the environment, and repair, maintenance and improvement) (Schedule 1);
- (b) the fees payable for the application for issue or renewal of PMC or PMP licences and for other matters including extension of licence validity and copying of the PMC or PMP (Tier 1 or Tier 2) register (Schedule 2);
- (c) the information that must be contained in and the documents that must accompany an application for a PMC licence or a PMP (Tier 1 or Tier 2) licence, provisional PMP (Tier 1 or Tier 2) licence (collectively "PMP licences") or its renewal (sections 4 and 5);
- (d) the respective criteria for holding PMC licences (e.g. engagement of a specified number of licensed PMPs) and PMP licences (e.g. requisite academic qualification and work experience) (sections 6 to 9);
- (e) the conditions that may be imposed on PMC and PMP licences (sections 10 to 12);
- (f) the information that must be provided to clients by a licensed PMC and the manner for providing such information (section 13 and Schedule 3); and
- (g) the matters (including information relating to the compliance with the criteria for holding a licence) in which a licensee must notify PMSA in writing of any change (section 14 and Schedule 4).

28. According to paragraph 21 of the LegCo Brief, the Hong Kong Association of Property Management Companies, the Hong Kong Institute of Facility Management, the Hong Kong Institute of Housing, the Chartered Institute of Housing Asian Pacific Branch and the Housing Managers Registration Board have jointly written to PMSA to support, among others, the enactment of L.N. 87.

29. As advised by the Clerk to the Panel on Home Affairs, the Administration and representatives of PMSA consulted the Panel on 24 June 2019 on the licensing regime for PMCs and PMPs proposed by PMSA, including the main provisions of the draft regulation (i.e. L.N. 87) to be made under Cap. 626. Members expressed concerns on various issues in relation to the proposed licensing regime. The Panel passed two motions urging PMSA to further listen to the views of the trade and various stakeholders on the proposed licensing regime and to address their concerns. In May 2020, PMSA

submitted an information paper (LC Paper No. CB(2)904/19-20(01)) advising that PMSA had conducted a series of consultations accordingly and setting out details of the latest proposed licensing regime. In light of the views received, PMSA had revised the proposed licensing regime and made appropriate amendments to the draft regulation.

30. L.N. 87 comes into operation on 1 August 2020.

PART V PUBLIC PLEASURE GROUNDS

Pleasure Grounds (Amendment) Regulation 2020 (L.N. 88)

31. L.N. 88 is made by SHA, in his capacity as the Authority⁵ under section 109 of the Public Health and Municipal Services Ordinance (Cap. 132) to amend the Pleasure Grounds Regulation (Cap. 132BC).

32. Under the existing section 25 of Cap. 132BC, the operation or playing of, or the making of any sounds by means of, any musical or other instrument (including any gramophone or radio apparatus) or the singing of any song, in any public pleasure ground ("PPG")⁶, to the annoyance of any other user, is prohibited unless with written permission of the Director of Leisure and Cultural Services ("the Director"). Under the existing section 30 of Cap. 132BC, any person who contravenes section 25 is guilty of an offence, and is liable on summary conviction to a fine at level 1 (\$2,000) and to imprisonment for 14 days.

33. L.N. 88 replaces the existing section 25 of Cap. 132BC with a new section 25 and amends section 30 of Cap. 132BC so that:

- (a) the Director may, by notice conspicuously displayed in a PPG, specify any requirement in relation to the carrying out of any music activity⁷ there (new section 25(1));
- (b) a person must not without the Director's written permission:
 - (i) carry out in a PPG a music activity that does not comply with a requirement specified by the Director referred to in paragraph (a) above (new section 25(2)); or to the annoyance of any other person (not just other users of the venue) (new section 25(3)); and

⁵ By virtue of sections 2 and 3 of, and the Third Schedule to, Cap. 132, the "Authority" for section 109 of Cap. 132 means SHA.

⁶ The list of PPGs (other than bathing beaches) is set out in the Fourth Schedule to Cap. 132.

⁷ "Music activity" is defined in the new section 25(6) to mean the operation or playing of, or the making of any sounds by means of, any musical or other instrument (including a gramophone, radio apparatus, amplifier or loudspeaker) or the singing of any song.

- (ii) solicit, or accept, or agree to receive, in a PPG, any reward (i.e. any gift, payment, service, favour, benefit or advantage) for any music activity or related activity (such as the acting as a host for, or any dancing that accompanies, the music activity) carried out there (new section 25(4)); and
- (c) a person who contravenes the new section 25(2), (3) or (4) commits an offence and is liable on conviction to a maximum fine at level 3 (i.e. \$10,000) and to imprisonment for 14 days (new section 30(2)).

34. According to paragraph 5 of the LegCo Brief (no file reference) issued by HAB and the Leisure and Cultural Services Department ("LCSD") on 19 May 2020, the amendments under L.N. 88 are made to address public's demand for effective regulation of noise nuisance in PPGs so that noise nuisance causing annoyance to nearby residents (not just other users of the venue) will also be prohibited. No information on public consultation is provided in the LegCo Brief. Upon our enquiry, LCSD confirmed that it had sought the views of District Councils, in particular the Kowloon City District Council and Tuen Mun District Council, on the legislative proposals through regular meetings. The two District Councils concerned requested LCSD to adopt more legislative measures to enhance the regulation of music or singing activities and other related acts in PPGs through a multi-pronged approach. Their views have been incorporated in L.N. 88.

35. As advised by the Clerk to the Panel on Home Affairs, at its meeting on 11 May 2020, the Panel was consulted on proposed amendments to Cap. 132BC to enhance the regulation of music or singing activities and other related performances in PPGs. While members in general were supportive of the proposed amendments, members expressed concerns on various issues including the criteria to be adopted in determining whether a performing group had caused noise nuisance and the effectiveness of the proposed amendments in tackling the problem of people being given reward for carrying out a music activity or a related activity in PPGs.

36. L.N. 88 comes into operation on 24 July 2020.

PART VI CONTROL OF DANGEROUS DRUGS AND CHEMICALS

Dangerous Drugs Ordinance (Amendment of First Schedule)

Order 2020

(L.N. 89)

Control of Chemicals Ordinance (Amendment of Schedule 2)

Order 2020

(L.N. 91)

37. L.N. 89 is made by the CE under section 50(1) of the Dangerous Drugs Ordinance (Cap. 134) after consultation with the Executive Council. It adds the following five substances to Part I of the First Schedule to Cap. 134 as dangerous drugs:

- (a) Methoxyacetylfentanyl;
- (b) Methyl 2-({1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonyl}amino)-3-methylbutanoate;
- (c) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- (d) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide; and
- (e) 1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide.

38. The effect of L.N. 89 is that the newly added substances are subject to the control and regulation by the Director of Health under Cap. 134. Illicit trafficking and manufacturing of any of the substances in contravention of Cap. 134 will be subject to a maximum penalty of life imprisonment and a fine of \$5 million (sections 4 and 6 of Cap. 134). Possession and consumption of the substances in contravention of Cap. 134 is also a criminal offence punishable by imprisonment for seven years and a fine of \$1 million (section 8 of Cap. 134).

39. L.N. 91 is made by the Secretary for Security under section 18A(1) of the Control of Chemicals Ordinance (Cap. 145) to add the following three substances and their salts (whenever the existence of such salts is possible) to Schedule 2 to Cap. 145:

- (a) Alpha-phenylacetoacetamide;
- (b) 3,4-MDP-2-P methyl glycidate; and
- (c) 3,4-MDP-2-P methyl glycidic acid.

40. The effect of L.N. 91 is to subject the three newly added substances to the control and regulation by the Commissioner of Customs and Excise under Cap. 145. Possession, manufacture, transporting or distribution of any of these substances for the unlawful production of dangerous drugs, and import or export of these substances not under and in accordance with a licence are criminal offences punishable by imprisonment for 15 years and a fine of \$1 million (section 15(1) of Cap. 145).

41. For the adverse effects of the above substances, Members may refer to paragraphs 4, 6 and 7 of the LegCo Brief (File Ref: NCR 2/1/8 S/F(21) Pt.4) issued by the Narcotics Division of the Security Bureau in May 2020. According to paragraphs 17 and 18 of the LegCo Brief, the Administration has consulted relevant trades, including holders of licences issued under Cap. 134, Cap. 145 and the Pharmacy and Poisons Ordinance (Cap. 138) on the amendments and there was no adverse comment. The Administration also consulted the Action Committee Against Narcotics which supported the proposed control of the relevant substances.

42. As advised by the Clerk to the Panel on Security, an information paper provided by the Administration entitled "Proposed amendments to the First Schedule to the Dangerous Drugs Ordinance and Schedule 2 to the Control of Chemicals Ordinance" was circulated to members of the Panel and all non-Panel Members vide LC Paper No. CB(2)804/19-20(01) on 8 April 2020. No member requested for the proposed amendments to be discussed at a Panel meeting.

43. L.N. 89 and L.N. 91 come into operation on 24 July 2020.

PART VII INTERCOUNTRY ADOPTION

Intercountry Adoption (Contracting States) (Amendment) Order 2020

(L.N. 90)

44. The Intercountry Adoption (Contracting States) Order (Cap. 290C) sets out in its Schedule the list of Contracting States to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption ("Convention") and the respective dates of the coming into effect of the Convention between HKSAR and the Contracting States. The Convention sets out a framework for international cooperation in intercountry adoptions and provides safeguards to ensure that such adoptions are made in the best interests of the child.

45. L.N. 90 is made by the Secretary for Labour and Welfare under section 20D of the Adoption Ordinance (Cap. 290) to add to Part I of the Schedule to Cap. 290C eight countries as the Contracting States and to specify the respective dates of the coming into effect of the Convention between HKSAR and these Contracting States. The newly added Contracting States are: (i) the Republic of Benin (1 October 2018), (ii) the Republic of Côte d'Ivoire (1 October 2015), (iii) the Republic of Ghana (1 January 2017), (iv) the Co-operative Republic of Guyana (1 June 2019), (v) the Republic of Honduras (1 July 2019), (vi) the Kyrgyz Republic (1 November 2016), (vii) the Republic of Namibia (1 January 2016), and (viii) the Republic of Zambia (1 October 2015).

46. The effect of L.N. 90 is that the Convention applies to an adoption between Hong Kong and any of the eight Contracting States in relation to an application made under the Convention. It is noted that the Convention already came into effect between HKSAR and these Contracting States between 2015 and 2019. Upon our enquiry, the Administration confirmed that no application for an adoption has so far been made in relation to any of these eight Contracting States.

47. According to paragraph 11 of the LegCo Brief (File Ref: LWB CR 1/5691/00) issued by the Labour and Welfare Bureau on 20 May 2020, since the amendment is a routine updating exercise, public consultation is considered unnecessary by the Administration.

48. As advised by the Clerk to the Panel on Welfare Services, the Panel has not been consulted on L.N. 90.

49. L.N. 90 came into operation on the date of its publication in the Gazette, i.e. 22 May 2020.

PART VIII DECLARATION OF MONUMENT AND HISTORICAL BUILDINGS

Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2020

(L.N. 92)

50. L.N. 92 is made by the Secretary for Development under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) after consultation with the Antiquities Advisory Board ("AAB") and with CE's approval. It declares:

- (a) the masonry bridge of Pok Fu Lam Reservoir, Pok Fu Lam, Hong Kong to be a monument under Cap. 53 ("Bridge"); and
- (b) the following places to be historical buildings under Cap. 53:
 - (i) the buildings and the adjoining land within Tung Wah Coffin Home at Pok Fu Lam, Hong Kong and *Pai Lau* of Tung Wah Coffin Home ("Coffin Home"); and
 - (ii) Tin Hau Temple and the adjoining buildings at Yau Ma Tei, Kowloon ("Temple").

51. As historical building is a type of monument as defined in section 2 of Cap. 53, the effect of L.N. 92 is that the above places become monuments under Cap. 53. Under section 6(1) of Cap. 53, excavation, carrying on building or other works in the newly declared monuments or demolition of the monuments is prohibited except in accordance with a permit granted by the Secretary for Development. Under section 19(2) of Cap. 53, any person who contravenes section 6(1) of Cap. 53 shall be guilty of an offence and shall be liable on conviction to a fine at level 6 (i.e. \$100,000) and imprisonment for one year.

52. According to paragraphs 12, 14 and 15 of the LegCo Brief (File Ref: DEVB/CHO/1B/CR/141) issued by the Development Bureau on 22 May 2020, the Bridge, the Coffin Home and the Temple have been accorded with Grade 1 status (by AAB under the existing administrative grading mechanism) which denotes their outstanding heritage value. Explicit agreements to the declaration proposals regarding

the Bridge (situated on government land) and the Coffin Home/Temple (situated on private lands) have been obtained from the relevant Government departments and owners respectively.

53. As advised by the Clerk to the Panel on Development, the Administration has not briefed the Panel on L.N. 92.

54. L.N. 92 came into operation on the date of its publication in the Gazette, i.e. 22 May 2020.

PART IX TRAINING BODY UNDER THE EMPLOYEES RETRAINING ORDINANCE (CAP. 423)

Employees Retraining Ordinance (Amendment of Schedule 2)

Notice 2020

(L.N. 93)

55. Schedule 2 to the Employees Retraining Ordinance (Cap. 423) contains a list of training bodies that may provide or conduct retraining courses for the purposes of Cap. 423. Under Cap. 423, these training bodies are eligible for payments from the Employees Retraining Fund for retraining courses attended by trainees eligible to receive retraining allowances.

56. L.N. 93, made by the Employees Retraining Board ("ERB") under section 31(2) of Cap. 423, amends Schedule 2 to Cap. 423 by adding to the list one training body, namely, MTR Academy (HK) Company Limited ("MTR Academy").

57. Members may refer to the LegCo Brief (File Ref: QA/TBM/09 Part 6) issued by the ERB Executive Office on 20 May 2020 for further details.

58. In response to LSD's enquiry as to whether there has been any public consultation on MTR Academy becoming a training body under Cap. 423, and if so, the views of the consulted parties, the ERB Executive Office confirmed that after vetting the qualifications and experience of MTR Academy, they have consulted the Quality Assurance and Review Committee ("the Committee") as well as the full Board of ERB, members of which comprise representatives of employers, labour unions, vocational training and human resources sectors. Both the Committee and the Board accepted the application of MTR Academy to become one of the ERB's training bodies.

59. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 93.

60. L.N. 93 came into operation on the date of its publication in the Gazette, i.e. 22 May 2020.

Concluding observations

61. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 83 and L.N. 86 to L.N. 93. LSD is scrutinizing the legal and drafting aspects of L.N. 84 and L.N. 85. A further report will be provided if necessary.

Prepared by

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28 May 2020