

**立法會**  
**Legislative Council**

LC Paper No. LS1/19-20

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 11 October 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)

**PART I PUBLIC BUS ROUTES AND SERVICES**

**Schedule of Routes (Citybus Limited) Order 2019** (L.N. 120)

**Schedule of Routes (Citybus Limited) (North Lantau and Hong Kong International Airport) Order 2019** (L.N. 121)

**Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2019** (L.N. 122)

**Schedule of Routes (Long Win Bus Company Limited) Order 2019** (L.N. 123)

**Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2019** (L.N. 124)

**Schedule of Routes (New World First Bus Services Limited) Order 2019** (L.N. 125)

**Public Bus Services (Amendment) Regulation 2019** (L.N. 129)

L.N. 120 to L.N. 125

L.N. 120 to L.N. 125 are made by the Chief Executive ("CE") in Council under section 5(1) of the Public Bus Services Ordinance (Cap. 230) to update the schedules of bus routes operated by five franchised bus companies.

2. Under section 5(1) of Cap. 230, CE in Council may grant to the existing franchised public bus companies the right to operate a public bus service

on such routes as specified by order. Section 15 of Cap. 230 provides that the Commissioner of Transport may, after consultation with the bus companies, require them to introduce new routes and make alterations to specified routes on a temporary basis. Such temporary route changes may take effect for an aggregate period not exceeding 24 months unless they are specified in orders by CE in Council under section 5(1) before expiry of that period. According to paragraph 2 of the Legislative Council ("LegCo") Brief (File Ref: THB(T)L 2/4/115) issued by the Transport and Housing Bureau ("THB") on 9 October 2019, L.N. 120 to L.N. 125 are made to formalize the route changes introduced under section 15 of Cap. 230 between 1 January 2018 and 30 April 2019 so that the changes can continue to take effect.

3. L.N. 120 to L.N. 125 respectively repeal the existing Schedule of Routes Orders made in 2018 (i.e. L.N. 83 of 2018 to L.N. 88 of 2018) and update the schedules of bus routes of five franchised bus companies to reflect the route changes made from 1 January 2018 to 30 April 2019 so that they can continue upon expiry of the 24-month period referred to in paragraph 2 above. According to paragraph 4 of the LegCo Brief, the relevant service changes are as follows:

- (a) Citybus Limited (which operates two bus franchises) introduced three new routes and made alterations to 15 routes under the franchise for the Hong Kong Island and cross-harbour bus network. It introduced five new routes and made alterations to 14 routes under the franchise for the Airport and North Lantau bus network;
- (b) The Kowloon Motor Bus Company (1933) Limited introduced 18 new routes, cancelled five routes and made alterations to 96 routes;
- (c) Long Win Bus Company Limited introduced six new routes and made alterations to 19 routes;
- (d) New Lantao Bus Company (1973) Limited introduced four new routes and made alterations to 11 routes; and
- (e) New World First Bus Services Limited introduced three new routes, cancelled three routes and made alterations to 21 routes.

4. For details of the above route changes of the respective franchised bus companies and their justifications, Members may refer to Annexes B to F of the LegCo Brief.

5. According to paragraph 7 of the LegCo Brief, the District Councils ("DC") concerned had been consulted on the major service changes before such changes were introduced under section 15 of Cap. 230. Comments, objections

and suggestions in relation to those changes were received from DC members. According to THB, DCs' suggestions had been taken on board where justified.

6. As advised by the Clerk to the Panel on Transport, the Panel has not been consulted by the Administration on L.N. 120 to L.N. 125.

7. L.N. 120 to L.N. 125 come into operation on 31 December 2019.

#### L.N. 129

8. Regulation 14A of the Public Bus Services Regulations (Cap. 230A) currently prohibits any person from bringing onto any bus any substance or article to which the Dangerous Goods Ordinance (Cap. 295) applies. By virtue of section 3 of Cap. 295, Cap. 295 applies to, among others, compressed gases.

9. L.N. 129 is made by the Secretary for Transport and Housing ("STH") under section 35(1) of Cap. 230<sup>1</sup> to amend regulation 14A of Cap. 230A so that a person intending to board a bus may bring onto the bus compressed oxygen contained in up to two oxygen cylinders if the person, before paying any fare:

- (a) shows to the driver or conductor of the bus that the compressed oxygen is required for the person's own medical use by inhaling the oxygen through a nasal cannula or oxygen mask connected to any such cylinder;
- (b) declares to the driver or conductor the number of oxygen cylinders the person is carrying; and
- (c) has not been advised by the driver or conductor that the total number of oxygen cylinders on board the bus will exceed two if the person brings the declared number of oxygen cylinders onto the bus.

By virtue of regulation 25(3) of Cap. 230A, any person who without reasonable excuse brings onto a bus any oxygen cylinder without complying with (a), (b) or (c) commits an offence and is liable to a fine of \$3,000 and to imprisonment for six months.

10. While paragraphs 3 and 4 (and footnote 3) of the LegCo Brief (File Ref: THB(T)CR 1/5593/00) issued by THB on 9 October 2019 seem to suggest that L.N. 129 will allow either one passenger to carry two compressed oxygen cylinders not exceeding five litres each, or two passengers to each carry one such

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<sup>1</sup> Under section 35(1)(db) of Cap. 230, STH may make regulations for controlling or prohibiting the carriage of goods and dangerous items on buses used by a franchised bus company.

oxygen cylinder, for self-medical use at any one time on board a franchised bus, it is noted that L.N. 129 defines "oxygen cylinder" merely as "a container used for containing compressed oxygen" without specifying a maximum capacity of five litres per cylinder, or referring to the maximum quantity stipulated in regulation 74(1) of the Dangerous Goods (General Regulations) (Cap. 295B) for which a licence is not required under Cap. 295.<sup>2</sup>

11. Upon enquiry by the Legal Service Division ("LSD"), THB has clarified that it is not the policy intent of L.N. 129 to impose an upper limit on the size or capacity of each oxygen cylinder that may be carried on board a franchised bus, and that L.N. 129 does not prohibit a person from carrying on board a franchised bus an oxygen cylinder with a capacity exceeding five litres. Any passenger doing so without a licence under Cap. 295 may, however, be prosecuted under Cap. 295 and liable upon conviction to a fine of \$25,000 and to imprisonment for six months (section 14 of Cap. 295). THB further advises that a patient is in any event unlikely to travel with an oxygen cylinder containing more than five litres of compressed oxygen due to its heavy weight.

12. According to paragraph 8 of the LegCo Brief, the Administration consulted the Transport Advisory Committee on the legislative amendments on 29 April 2019, and the Committee agreed to the amendments to allow access to franchised buses for persons carrying compressed oxygen cylinders for self-medical use when travelling.

13. As advised by the Clerk to the Panel on Transport, the Panel was consulted by the Administration on 17 May 2019 on the proposal to amend Cap. 230A to allow access to franchised buses for persons carrying compressed oxygen cylinders for self-medical use when travelling. Members in general welcomed the proposal, but were concerned about the difficulties for the bus captains to execute the relevant measures as stipulated in the proposal, and the undue burden posed on bus captains arising from the additional responsibility of ascertaining that no more than two compressed oxygen cylinders were allowed on a bus at any one time. Some members also cast doubt on whether bus captains could assess whether the compressed oxygen cylinders carried by passengers were for self-medical use or solely for conveyance purpose, and expressed concerns that disputes might arise under the above situation.

14. L.N. 129 comes into operation on 1 January 2020.

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<sup>2</sup> Under section 6 of Cap. 295, no person shall manufacture, store, convey or use any dangerous goods except under and in accordance with a licence granted under Cap. 295, but by virtue of regulation 74(1) of Cap. 295B, the licence requirement under section 6 of Cap. 295 does not apply to, among others, oxygen not exceeding two cylinders where one cylinder is deemed to be equivalent to 5 L (five litres).

## **PART II MERCHANT SHIPPING**

**Merchant Shipping (Prevention of Oil Pollution)  
(Amendment) (No. 2) Regulation 2019** (L.N. 127)

**Merchant Shipping (Prevention of Pollution by Garbage)  
(Amendment) (No. 2) Regulation 2019** (L.N. 128)

**Merchant Shipping (Local Vessels) (General) (Amendment)  
Regulation 2016 (Commencement) Notice** (L.N. 136)

**Merchant Shipping (Local Vessels) (Safety and Survey)  
(Amendment) Regulation 2016 (Commencement) Notice** (L.N. 137)

### L.N. 127 and L.N. 128

15. L.N. 127 and L.N. 128 are made by STH under sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)<sup>3</sup> to implement the latest requirements under Annexes I and V to the International Convention for the Prevention of Pollution from Ships, 1973 ("Convention") of the International Maritime Organization ("IMO").

16. L.N. 127 amends the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A)<sup>4</sup> by:

- (a) adding a new regulation 12B and repealing the existing regulation 25 so as to apply to ships of 400 GT and above the latest requirements relating to oil residue (sludge) tanks and the disposal of oil residue (sludge) set out in Annex I to the Convention;<sup>5</sup> and
- (b) making textual and consequential amendments (including from "off shore" or "off-shore" to "offshore", and changing the Chinese rendition of "renewal survey" from "續期檢驗" to "續證檢驗").

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<sup>3</sup> Under sections 3 and 3A of Cap. 413, STH may make regulations for giving effect to the Convention, and any such regulations may set out or refer to the relevant provisions of the Convention (whether in a schedule or otherwise). According to paragraph 10 of the LegCo Brief, the technical requirements of the Convention are updated from time to time, and this direct reference approach allows local legislation to remain up-to-date as far as practicable.

<sup>4</sup> Earlier this year, L.N. 45 amended Cap. 413A to provide that oil or oily mixtures must not be discharged into the sea from Hong Kong ships in Arctic waters and that a Hong Kong ship must not operate in polar waters unless certain requirements in relation to the structure and arrangements of the ship have been complied with: Please refer to LC Paper No. LS64/18-19 for further details.

<sup>5</sup> As amended by IMO Resolution MEPC.266(68).

17. L.N. 128 amends the Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap. 413O)<sup>6</sup> to give effect to, among others, the latest record keeping requirements in a Garbage Record Book set out in Annex V to the Convention.<sup>7</sup>

18. According to paragraph 14 of the LegCo Brief (File ref: THB(T)PML CR 8/10/90/2 and THB(T)PML MA 90/6/2) issued by THB and the Marine Department ("MD") in October 2019, the Administration consulted the Hong Kong Fleet Operation Advisory Committee of MD in November 2018, and members of the Committee supported the proposals.

19. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 26 November 2018 on the legislative proposal to incorporate into local legislation the latest requirements under the Convention. Members were generally supportive of the proposal.

20. L.N. 127 and 128 come into operation on 1 January 2020.

#### L.N. 136 and L.N. 137

21. L.N. 136 and 137 are made by STH to appoint 1 February 2020 as the day on which the provisions of the Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2016 (L.N. 186 of 2016) and the Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment) Regulation 2016 (L.N. 187 of 2016) that have not come into operation ("uncommenced provisions") come into operation. The uncommenced provisions relate to radiotelephone equipment and very high frequency ("VHF") radiotelephone communication on board certain local vessels.

22. L.N. 186 of 2016 and L.N. 187 of 2016 were made by STH under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548)<sup>8</sup> to enhance navigational and communications equipment on local vessels in response to the recommendations of the Commission of Inquiry appointed by CE in Council subsequent to the vessel collision near Lamma Island on 1 October 2012. Most of their provisions were brought into operation in 2017 and 2018. A subcommittee was formed by the House Committee to study L.N. 186 and 187 of 2016 ("the Subcommittee"). Members may refer to LSD's paper No. LS18/16-17 and the report of the Subcommittee (Ref.: CB(4)446/16-17) for further details.

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<sup>6</sup> Earlier this year, L.N. 48 amended 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. Members may refer to LC Paper No. LS64/18-19 for further details.

<sup>7</sup> As amended by IMO Resolution MEPC.277(70).

<sup>8</sup> Under section 89(1)(g) of Cap. 548, STH may make regulations for, among others, the equipment required to be carried on board local vessels.

23. Upon LSD's enquiry, THB has clarified that the uncommenced provisions require, among others, the presence of a certificated operator of VHF radio on board Class I local vessels at all times when they are underway. To allow sufficient lead time for existing local vessel operators to complete the requisite training and examinations to become certificated operators of VHF radio, the Administration has deferred the commencement of the uncommenced provisions. According to THB, to ensure the trade's readiness before commencing those provisions, MD has worked closely with the Office of the Communications Authority to encourage the trade to undergo the relevant examinations and obtain the necessary certification, and has worked with various marine training institutions to ensure that there are sufficient training courses on the operation of VHF radio. According to THB, around 1,000 crew members obtained the requisite certificates of competency between November 2016 and August 2019 to operate VHF radio on board their vessels. According to THB, MD consulted the Local Vessels Advisory Committee on 18 March 2019 and it was agreed that the uncommenced provisions could come into operation. A copy of THB's reply to LSD dated 15 October 2019 is at **Annex**.

24. As advised by the Clerk to the Panel on Economic Development, the Panel has not been consulted on L.N. 136 and 137, but the Subcommittee supported L.N. 186 of 2016 and L.N. 187 of 2016, and noted from the Administration that provisions relating to VHF radiotelephone would commence separately by notice published in the Gazette to allow sufficient lead time for the trade to comply with relevant requirements through training.

### **PART III SECURITIES AND FUTURES RULES**

**Securities and Futures (Investor Compensation—Claims)  
(Amendment) Rules 2019** (L.N. 130)

**Securities and Futures (Investor Compensation—Levy)  
(Amendment) Rules 2019** (L.N. 131)

**Securities and Futures (Investor Compensation—  
Compensation Limits) (Amendment) Rules 2019** (L.N. 132)

**Securities and Futures Ordinance (Appointed Day—  
Dealers Deposit Scheme) Notice** (L.N. 133)

25. The Investor Compensation Fund ("ICF") is established by the Securities and Futures Commission ("SFC") under section 236 of the Securities and Futures Ordinance (Cap. 571) to provide a measure of compensation to clients of intermediaries who have sustained loss by reason of default of such

intermediaries in connection with securities or futures contracts listed or traded on a recognized stock market or recognized futures market. L.N. 130 to L.N. 132 are made to amend the relevant rules to enhance the ICF regime, including the types of securities covered by ICF, levy payable for funding ICF, and maximum amount of compensation payable. L.N. 133 is separately made to provide for a cut-off date for the purpose of winding up the Dealers Deposit Scheme ("DDS") which was replaced by ICF in 2003. Details are provided in the ensuing paragraphs.

### L.N. 130

26. Under section 4 of the Securities and Futures (Investor Compensation—Claims) Rules (Cap. 571T), where a qualifying client of a specified person<sup>9</sup> sustains loss as a result of a default<sup>10</sup> committed by the specified person (or an associated person of the specified person) in relation to specified securities or futures contracts (i.e. securities or futures contracts listed or traded on The Stock Exchange of Hong Kong Limited ("SEHK") or The Hong Kong Futures Exchange Limited ("HKFE")) or their related assets, he may claim compensation from ICF.

27. L.N. 130 is made by SFC under section 244(2) of Cap. 571 after consultation with the Financial Secretary. It amends Cap. 571T mainly to expand the types of securities in respect of which a loss may be compensated from ICF to cover Stock Connect securities traded under the northbound link<sup>11</sup> of the arrangements commonly known as the Stock Connect.<sup>12</sup> These securities are those listed or traded on the Shanghai Stock Exchange ("SSE") or the Shenzhen Stock Exchange ("SZE") and in respect of which an order for sale or purchase is permitted to be routed through the northbound link of a Stock Connect arrangement under the rules of SEHK.

28. L.N. 130 comes into operation on 1 January 2020.

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<sup>9</sup> A specified person refers to (a) an intermediary licensed or registered for dealing in securities or dealing in futures contracts; (b) an intermediary licensed for securities margin financing; or (c) an authorized financial institution which provides securities margin financing (see section 2 of Cap. 571T).

<sup>10</sup> Default means (a) the insolvency, bankruptcy or winding up of the specified person or associated person of the specified person; or (b) any breach of trust, defalcation, fraud or misfeasance committed by the specified person or associated person of the specified person, which occurs on or after the appointed day (see section 2 of Cap. 571T).

<sup>11</sup> Northbound link, in relation to a Stock Connect arrangement, means the facilities provided or arranged by SEHK under the arrangement for routing orders for the sale or purchase of securities for execution on SSE or SZE and for handling matters relating to those securities (see the definition as added under section 3(5) of L.N. 130).

<sup>12</sup> Under the Stock Connect arrangement, there is mutual market access between SEHK and SSE and SZE, and Stock Connect securities may be traded on markets operated by SSE or SZE through certain Hong Kong intermediaries.



L.N. 131

29. L.N. 131 is made by CE in Council under section 244(1) of Cap. 571 to amend the Securities and Futures (Investor Compensation—Levy) Rules (Cap. 571AB) to:

- (a) provide for a levy payable for the sale or purchase of Stock Connect securities (at the rate of 0.002% of the consideration), the order for which is routed through the northbound link of a Stock Connect arrangement;
- (b) provide that no levy is payable for the sale or purchase of securities listed or traded on SEHK (which are recorded on SEHK or notified to SEHK under its rules) and the order for which is routed through the southbound link<sup>13</sup> of a Stock Connect arrangement (i.e. trading of such securities is conducted through facilities provided by SSE or SZE under the Stock Connect arrangement);
- (c) raise the triggering levels for suspending and reinstating ICF levies from \$1.4 billion and \$1 billion to \$3 billion and \$2 billion respectively so that the levies may be suspended if the net asset value of ICF exceeds HK\$3 billion and the levies may be reinstated if the net asset value of ICF falls below HK\$2 billion; and
- (d) add a new section 27 to provide that despite the amendments in (c) and regardless of the net asset value of ICF on 1 January 2020, the exemption notice on the suspension of levy published on 11 November 2005 under section 25(1) of Cap. 571AB<sup>14</sup> (i.e. G.N. 5808 of 2005) continues to have effect so that no person is required to pay the levy in respect of the sale or purchase of securities or futures contracts that takes place at any time on or after 19 December 2005 until the date to be specified by a termination of exemption notice published under section 26(1) of Cap. 571AB.<sup>15</sup>

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<sup>13</sup> Southbound link, in relation to a Stock Connect arrangement, means the facilities provided or arranged by SSE or SZE under the arrangement for routing orders for the sale or purchase of securities for execution on SEHK and for handling matters relating to those securities (see the definition as added under section 3 of L.N. 131).

<sup>14</sup> Section 25 of Cap. 571AB (as amended by L.N. 131) provides that an exemption notice may be published in the Gazette if the net asset value of ICF exceeds \$3 billion to the effect that levy is not payable for trading of securities or futures contracts taking place at any time on or after the date specified in the exemption notice.

<sup>15</sup> Under section 26 of Cap. 571AB (as amended by L.N. 131), a termination of exemption notice may be published in the Gazette if the net asset value of ICF is below \$2 billion to the effect that a levy will be payable for trading of securities or futures contracts taking place at any time from the date specified in the termination notice.

30. L.N. 131 comes into operation on 1 January 2020.

#### L.N. 132

31. Under section 3 of the Securities and Futures (Investor Compensation — Compensation Limits) Rules (Cap. 571AC), the maximum amount of compensation payable under ICF for loss sustained in relation to securities or futures contracts listed or traded on SEHK or HKFE and their related assets is currently \$150,000. L.N. 132 is made by CE in Council under section 244(1) of Cap. 571 to amend Cap. 571AC to:

- (a) increase the maximum amount of compensation payable to a claimant under section 9 of Cap. 571T from \$150,000 to \$500,000 in respect of the losses resulting from the default of an intermediary if the default date<sup>16</sup> is after 31 December 2019; and
- (b) expand the scope of losses in respect of which the compensation limit applies (consequential to the amendments made by L.N. 130) by including losses in relation to securities traded under the northbound link of the Stock Connect arrangement.

32. L.N. 132 comes into operation on 1 January 2020.

#### L.N. 133

33. DDS, established prior to the enactment of Cap. 571, consists of funds under the repealed Commodities Trading Ordinance (Cap. 250) and the repealed Securities Ordinance (Cap. 333) under which dealers were required to make deposits and securities margin financiers were required to lodge security with DDS for providing compensation in case of default of dealers or securities margin financiers. Section 76 of Part 1 of Schedule 10 to Cap. 571 ("the said section 76") provides for the transitional arrangements for DDS. To begin the process to wind up DDS which had ceased to operate since 2003, a cut-off date known as the "appointed day" is provided for in the said section 76.

34. By L.N. 133, the Secretary for Financial Services and the Treasury has appointed 1 January 2020 as the appointed day for the purposes of the said section 76. After the appointed day, where there is any deposit or security forfeited by SFC under DDS that has yet to be disposed of, SFC will specify a day

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<sup>16</sup> Default date, in relation to a default, means the date of the default determined by SFC under section 7(1)(b) of Cap. 571T; or the date as varied or confirmed by the Securities and Futures Appeals Tribunal or the Court of Appeal (as the case may be) under Part XI of Cap. 571 (see the definition as added under section 3(3) of L.N. 132).

on or before which claims for compensation against any such deposit or security may be made by the clients of the dealers or securities margin financiers concerned.<sup>17</sup> The deposit or any of its remaining balance held in DDS will be returned to the dealer or the registered financier under certain circumstances.<sup>18</sup> Where SFC is unable to locate the dealer or the registered financier within the specified period, the relevant money will be transferred to ICF.<sup>19</sup>

35. According to paragraph 22 of the LegCo Brief issued by the Financial Services and the Treasury Bureau ("FSTB") and SFC (File Ref: S&F/1/2/13C (2019)) on 9 October 2019, SFC conducted a public consultation on the amendments from April to June 2018 and received strong support for the amendments. SFC has taken into account the comments received in finalizing the amendments.

36. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed by the Administration and SFC at its meeting on 19 February 2019 on the proposals to enhance the investor compensation regime and to wind-up DDS. Members had no objection to the proposals and enquired about the time required for processing compensation claims from investors.

## **PART IV PATENTS**

### **Patents (Amendment) Ordinance 2016 (Commencement)**

**Notice**

**(L.N. 134)**

### **Patents (General) (Amendment) Rules 2019**

**(Commencement) Notice**

**(L.N. 135)**

#### L.N. 134

37. By L.N. 134, the Secretary for Commerce and Economic Development has appointed 19 December 2019 as the day on which the Patents (Amendment) Ordinance 2016 (Ord. No. 17 of 2016) comes into operation.

38. Ord. No. 17 of 2016, published in the Gazette on 10 June 2016, amends the Patents Ordinance (Cap. 514) to provide for a new system for original grant of standard patents, refine the current short-term patent system by providing for substantive examination of short-term patents and making other technical amendments, prohibit the use of certain titles and descriptions in providing patent agency services, and provide for related and transitional matters. Prior to the

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<sup>17</sup> See section 76(4) of Part 1 of Schedule 10 to Cap. 571.

<sup>18</sup> See section 76(8) and (9) of Part 1 of Schedule 10 to Cap. 571.

<sup>19</sup> See section 76(11) of Part 1 of Schedule 10 to Cap. 571.

enactment of Ord. No. 17 of 2016, a Bills Committee was formed to study the Patents (Amendment) Bill 2015. Members may refer to the Report of the Bills Committee (LC Paper No. CB(1)972/15-16) for further information.

L.N. 135

39. By L.N. 135, the Acting Registrar of Patents has appointed 19 December 2019 as the day on which the Patents (General) (Amendment) Rules 2019 (L.N. 35 of 2019) come into operation.

40. L.N. 35 of 2019, which was published in the Gazette on 15 March 2019, amends the Patents (General) Rules (Cap. 514C) to specify the details of implementing Ord. No. 17 of 2016. It provides for the requirements and/or procedures concerning the filing of original grant of standard patents ("SP(O)") applications and the formality and substantive examinations of SP(O) applications, the requirements and/or procedures concerning the substantive examination of a short-term patent ("STP") and the request for amendment of an STP after grant; prescribes the fees in relation to SP(O) applications and modifies the fees for standard patents; and provides for other consequential or technical amendments. A subcommittee was formed to study L.N. 35 of 2019 in detail. Members may refer to the Report of the Subcommittee on L.N. 35 of 2019 (LC Paper No. CB(1)930/18-19) for further information.

41. No LegCo Brief has been issued in respect of L.N. 134 and L.N. 135.

42. As advised by the Clerk to the Panel on Commerce and Industry, the Administration has not consulted the Panel on L.N. 134 and L.N. 135.

**PART V MISCELLANEOUS ITEMS**

**Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Estonia) Order** (L.N. 126)

**Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) (Amendment) Notice 2019** (L.N. 138)

**Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2019** (L.N. 139)

L.N. 126

43. 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.

44. L.N. 126 is made by CE in Council under section 49(1A) of Cap. 112 to give effect to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Estonia ("Estonia") for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("Estonia Agreement") signed on 25 September 2019 together with its Protocol.

45. According to paragraph 4 of the LegCo Brief (File Ref: TsyB R2 183/800-1-1/16/0 (C)) issued by FSTB on 9 October 2019, 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 foreign jurisdiction 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 agreements ("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.

46. For the purposes of section 49(1A) of Cap. 112, L.N. 126 declares that the arrangements in Articles 1 to 28 of the Estonia Agreement and the Protocol to the Estonia Agreement 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 Estonia, and that it is expedient that those arrangements should have effect.

47. The provisions in the Estonia Agreement set out the allocation of taxing rights between Hong Kong and Estonia and the relief on tax rates on different types of income. The Estonia Agreement 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 Estonia Agreement 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 CDTA shall be treated as secret), we note that the scope of disclosure and use of information under the Estonia Agreement are different from the sample EoI Article in the following aspects:

- (a) information may be disclosed to oversight bodies;<sup>20</sup> and
- (b) information obtained under the Estonia Agreement may be used for non-tax related purposes if such purposes are allowed under the laws of both Hong Kong and Estonia and the tax authority of the supplying party authorizes such use.<sup>21</sup>

48. According to paragraph 12(c) and footnote 2 of the LegCo Brief, in relation to the disclosure of information to the oversight bodies of the tax authorities concerned, the Estonia Agreement 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 in September 2018. Estonia advised that the authorities that can act as oversight bodies in relation to the tax authority in Estonia (in addition to the courts) are the National Audit Office and the Parliament.

49. In relation to the use of information for non-tax related purposes, the Administration stated in paragraph 12(f) and footnote 3 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, Estonia may only use the tax information exchanged under the Estonia Agreement 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. Estonia 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.

50. The effects of the declarations referred to in paragraph 46 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 Estonia, have effect in relation to any tax of Estonia that is the subject of that provision.

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<sup>20</sup> See Article 24(2) of the Estonia Agreement.

<sup>21</sup> See Article 24(2) of the Estonia Agreement.

51. According to paragraph 19 of the LegCo Brief, the business and professional sectors have all along supported the Administration's policy to conclude more CDTAs with the trading and investment partners of Hong Kong.

52. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 126.

53. L.N. 126 comes into operation on 6 December 2019.

#### L.N. 138

54. Schedule 1 to the Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) Notice (Cap. 374U) designates prohibited zones ("PZs") at the Hong Kong International Airport ("Airport") in which the driving of specified motor vehicles is prohibited. Part 1 of Schedule 2 to Cap. 374U designates restricted zones ("RZs") at the Airport in which drivers of specified motor vehicles are prohibited from picking up or setting down passengers, or loading or unloading goods.

55. L.N. 138 is made by the Airport Authority ("AA") with the approval of the Commissioner for Transport under regulation 14(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374G), as modified by section 1 of Part V of Schedule 2 to the Airport Authority Bylaw (Cap. 483A). It amends:

- (a) Schedule 1 to Cap. 374U to vary the designation in respect of PZ at Kwo Lo Wan Road, update the plan of PZ at Chek Lap Kok, and designate certain areas as PZs (part of Kwo Lo Wan Road and part of Tung Fai Road in which motor vehicles exceeding 11m in overall length are prohibited), and relocate the Coach Station in another PZ; and
- (b) Part 1 of Schedule 2 to Cap. 374U to vary the designation of certain areas in RZs, designate certain areas (in relation to part of Kwo Lo Wan Road, Tung Wing Road and Chek Lap Kok Road) as RZs, and remove an area (the road intersecting the south end of Tung Fai Road) from the list of RZs.

56. According to paragraph 3 of the LegCo Brief (File Ref: THB(T)CR2/935/95 Pt. 36) issued by the Transport and Housing Bureau on 8 October 2019, the amendments are made in light of the commissioning of the extension of Terminal 1; closure of Terminal 2 for expansion in end 2019, and the recent development and operational needs at the Airport. According to paragraph 8 of the LegCo Brief, AA has consulted stakeholders of the relevant industry on the amendments and will continue to update stakeholders and collect feedback.

57. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 138.

58. L.N. 138 comes into operation on 6 December 2019.

#### L.N. 139

59. L.N. 139 is made by the Director of Health under section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371) to amend the Schedule to the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D) by:

- (a) adding three new public transport facilities ("PTFs")<sup>22</sup> to the Schedule to Cap. 371D with the effect that such facilities are designated as no smoking areas ("NSAs") in PTFs under Cap. 371;
- (b) updating the details of four existing PTFs specified in the Schedule to Cap. 371D; and
- (c) removing one PTF (i.e. To Wah Road Bus Terminus, Yau Ma Tei) from the Schedule to Cap. 371D with the effect that this area ceases to be a designated NSA in PTFs under Cap. 371.

60. According to paragraph 6 of the LegCo Brief (File Ref: FH CR 7/52/581/89) issued by the Food and Health Bureau and the Department of Health on 9 October 2019, the three new PTFs are added because they meet the criteria specified in section 3(1AB) of Cap. 371. Further, the details of four PTFs already listed in the Schedule are updated by L.N. 139 owing to changes in their location, physical features and settings. In addition, one PTF is removed from the Schedule because it no longer meets the criteria owing to changes in transport arrangement.

61. Under section 7(1) of Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in a designated NSA commits an offence and is liable on summary conviction to a fine of \$5,000. Smoking in an NSA is also a scheduled offence in respect of which a public officer may give the offender a notice under section 3 of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) offering him an opportunity to discharge his liability to conviction for the offence by payment of a fixed penalty (currently fixed at \$1,500) within 21 days from the date of the notice.

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<sup>22</sup> These facilities are West Kowloon Station Bus Terminus, Chung On Bus Terminus and Sai Kung (North) Public Transport Interchange.



62. According to paragraph 13 of the LegCo Brief, the Administration has issued an information note on the details of the amendments to 18 District Councils. Further, all plans of the NSAs in PTFs have been deposited in the Land Registry for inspection by the public. They will also be posted on the Tobacco Control Office's website before L.N. 139 comes into operation.

63. As advised by the Clerk to the Panel on Health Services, the Administration has not consulted the Panel on L.N. 139.

64. L.N. 139 comes into operation on 31 December 2019.

### **Concluding observations**

65. LSD is scrutinizing the legal and drafting aspects of L.N. 120 to L.N. 128 and L.N. 130 to L.N. 133, and seeking further clarifications from THB in relation to L.N. 129 on the matters discussed in paragraphs 10 to 11 above. LSD will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 134 to L.N. 139.

Encl.

Prepared by

LOO Chi-pong, Bonny (L.N. 120 to L.N. 125, L.N. 127 to L.N. 129, L.N. 136 and L.N. 137)

CHENG Kiu-fung, Vanessa (L.N. 126, L.N. 130 to L.N. 135 and L.N. 138 to L.N. 139)

Assistant Legal Advisers

Legislative Council Secretariat

23 October 2019

LS/S/1/19-20

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**By email**

15 October 2019

Mr Bonny LOO  
Legal Service Division  
Legislative Council Secretariat,  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr LOO,

**Merchant Shipping (Local Vessels) (General) (Amendment) Regulation  
2016 (Commencement) Notice (L.N. 136 of 2019)  
Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment)  
Regulation 2016 (Commencement) Notice (L.N. 137 of 2019)**

Thank you for your letter of 11 October 2019 on the captioned Notices.  
Our response to the three parts of your letter is as follows:

- (a) To enhance marine safety, the Secretary for Transport and Housing (“STH”) made the Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2016 (L.N. 186 of 2016) and the Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment) Regulation 2016 (L.N. 187 of 2016) (collectively as “the two Amendment Regulations”) in December 2016 to provide for the requirements on the installation and operation of three kinds of navigational and communications equipment (i.e. Automatic Identification System (“AIS”), radar equipment and Very High Frequency radiotelephone (“VHF radio”)) on board certain local vessels. Most of the provisions of the two Amendment Regulations came into operation on 1 April 2017.

Provisions relating to radar equipment came into operation on 1 December 2017, while those relating to the installation and operation of AIS on Class II vessels came into operation on 1 March 2018 upon the conclusion of the Government's subsidy scheme for Class II vessels to install AIS in February 2018.<sup>1</sup>

- (b) The provisions to be commenced under the captioned two Notices ("the VHF provisions") provide for requirements on the installation and operation of VHF radio on board Class I local vessels. In particular, a certificated operator of VHF radio ("certificated operator")<sup>2</sup> is required to be present on board such vessels at all times when they are underway. To allow sufficient lead time for existing local vessel operators to complete the requisite training and examinations to become a certificated operator of VHF radio, the Government deferred the commencement of the VHF provisions.

At the meeting of the Legislative Council subcommittee to scrutinise the two Amendment Regulations on 5 January 2017, Members requested the Government to undertake measures to ensure the trade's readiness before commencing those provisions. In this connection, the Marine Department ("MD") has worked closely with the Office of the Communications Authority to encourage the trade to undergo the relevant examinations and obtain the necessary certification. MD has also worked with various marine training institutions to ensure that there are sufficient training courses on the operation of VHF radio. During the period between November 2016 and August 2019, around 1,000 crew members had obtained the certificate of competency. MD consulted the Local Vessels Advisory Committee on 18 March 2019 and it was agreed then that the VHF provisions could come into operation.

- (c) Upon the commencement of the VHF provisions, all provisions in the two Amendment Regulations have come into operation.

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<sup>1</sup> This legislative timetable has been set out in our Legislative Council Brief issued in December 2016 (File reference: THB(T)PML 8/10/70/16).

<sup>2</sup> A certificated operator is a crew member of a vessel who holds a certificate of competency that is issued under section 32K of the Telecommunications Ordinance (Cap. 106), and one that qualifies the crew member to operate the class of VHF radio on board the vessel.

Should you have any further enquiries, please contact the undersigned at 3509 8257. Thank you.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Brian Lam". The signature is fluid and cursive, with the first name "Brian" and the last name "Lam" clearly distinguishable.

( Brian LAM )  
for Secretary for Transport and Housing

c.c.

Director of Marine (Attn: Mr Adrian LOW)

Secretary for Justice (Attn: Miss Emma WONG)