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LC Paper No. LS12/19-20

**Legal Service Division Report on
Subsidiary Legislation and Non-legislative Instrument
Gazetted on 25 October 2019**

Tabling in LegCo : Council meeting of 30 October 2019

Amendment to be made by : Council meeting of 27 November 2019 (or that of 18 December 2019 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION MADE UNDER THE
CONSERVATION OF ANTARCTIC MARINE LIVING
RESOURCES ORDINANCE (CAP. 635)**

**Conservation of Antarctic Marine Living Resources
(Toothfish Catch Documentation Scheme) Regulation** (L.N. 150)

**Conservation of Antarctic Marine Living Resources
(Port Inspection and Control) Regulation** (L.N. 151)

**Administrative Appeals Board Ordinance
(Amendment of Schedule) (No. 2) Order 2019** (L.N. 152)

**Conservation of Antarctic Marine Living Resources
Ordinance (Commencement) Notice** (L.N. 153)

The Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635) was published in the Gazette as Ord. No. 2 of 2019 on 1 February 2019 following the passage of the Conservation of Antarctic Marine Living Resources Bill ("the Bill") by the Legislative Council ("LegCo") on 23 January 2019. Cap. 635 provides for the implementation of the Convention on the Conservation of Antarctic Marine Living Resources ("Convention"), including conservation measures adopted under the Convention ("CMs"). Prior to the enactment of Cap. 635, the Bill had been studied by a Bills Committee. Members may refer to the report of the Bills Committee dated 15 January 2019 (LC Paper No. CB(2)585/18-19) for further details.

L.N. 153

2. By L.N. 153, the Secretary for Food and Health ("SFH") appoints 1 July 2020 as the day on which Cap. 635 comes into operation.

L.N. 150 to L.N. 152

3. L.N. 150 to L.N. 152 are made to provide for the implementation details of the relevant CMs and related matters.

4. L.N. 150, which is made by SFH under section 4 of Cap. 635, implements Conservation Measure 10-05 ("CM10-05")¹ to provide for a licensing regime for regulating the movement of toothfish items ("TIs"). It provides, among others, that:

- (a) the Director of Agriculture, Fisheries and Conservation ("DAFC") may grant, refuse to grant, or cancel a licence for the import of TIs or taking TIs out of Hong Kong;
- (b) a person who without reasonable excuse imports any TI or take it out of Hong Kong without a valid licence commits an offence, and is liable on conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for one year;
- (c) certain transshipment of TIs outside Hong Kong without valid documentation constitutes a criminal offence if a "Hong Kong vessel" is involved, i.e. a vessel flying the regional flag of the Hong Kong Special Administrative Region ("HKSAR"); and
- (d) exemptions are provided for personal baggage (if the total net weight of all TIs does not exceed 15 kg), persons in transit, articles in transit and air transshipment cargo.

5. L.N. 151 is made by SFH under section 4 of Cap. 635 mainly to implement Conservation Measure 10-03. It regulates the entry into Hong Kong waters of fishing vessels carrying Antarctic marine organisms ("AMOs"), and includes provisions concerning:

- (a) the requirement for a pre-arrival notification (not less than 48 hours before entry) to be given to DAFC;

¹ Under section 2(1) of L.N. 150, CM10-05 means Conservation Measure 10-05 adopted by the Commission for the Conservation of Antarctic Marine Living Resources established under the Convention for the Catch Documentation Scheme relating to toothfish, as revised or substituted from time to time and as applied to Hong Kong. Under section 4(3) of Cap. 635, SFH may adopt the "direct reference approach" in the regulations made under Cap. 635, i.e. an approach of making direct reference to a CM that applies to Hong Kong in making such regulations.

- (b) DAFC's power to deny the entry of certain fishing vessels into Hong Kong waters;
- (c) DAFC's power to give directions to fishing vessels;
- (d) authorized officers' powers to inspect fishing vessels;
- (e) the restriction of the removal of AMOs from fishing vessels engaged in illegal, unreported and unregulated fishing or fishing vessels that have been used to fish in contravention of any CM; and
- (f) offences for contravening the provisions of L.N. 151.

6. L.N. 152 is made by the Chief Executive ("CE") in Council under section 4 of the Administrative Appeals Board Ordinance (Cap. 442). It amends the Schedule to Cap. 442 to provide for appeals to the Administrative Appeals Board in respect of DAFC's decisions made under L.N. 150 in relation to licences for the import, export or re-export of TIs. These include the decisions to attach a condition to a licence, refuse a licence application, and cancel a licence.

7. L.N. 150 to L.N. 152 come into operation on the day on which Cap. 635 comes into operation, i.e. 1 July 2020.

8. According to paragraph 18 of the LegCo Brief (File Ref: FH CR 1/2576/18) issued by the Food and Health Bureau and the Agriculture, Fisheries and Conservation Department ("AFCD") in October 2019, AFCD held a briefing session with trading companies and representatives from catering association, etc. in March 2019 to keep the trade informed of the new legislative requirements.

9. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel has not been consulted on L.N. 150 to L.N. 153. However, noting that the regulations to be made under Cap. 635 would have extra-territorial effect, members of the Bills Committee on the Bill did specifically request the Administration to provide, when the regulations were tabled in LegCo, the framework on extra-territorial operations for detailed study (see paragraphs 12 and 32 of the report of the Bills Committee). Concerns were also raised about the resources required for implementing the new licensing system, and coordination among government departments in port inspection, etc.

PART II MARINE SAFETY ENHANCEMENT MEASURES

Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment) Regulation 2019 (L.N. 154)

Merchant Shipping (Local Vessels) (General) (Amendment) (No. 3) Regulation 2019 (L.N. 155)

10. L.N. 154 and L.N. 155 are made by the Secretary for Transport and Housing under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) to provide for the safety of passengers on board a vessel at sea. Major provisions of the two legal notices are set out in the ensuing paragraphs.

L.N. 154

11. L.N. 154 amends the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G) to provide, among other things, the following requirements in Schedule 3 to Cap. 548G regarding the provision of lifejackets on local vessels:

- (a) with the exception of certain vessels, all local vessels are required to carry on board lifejackets the total number of which (excluding infant lifejackets) must not be less than the total number of the persons (including crew members and passengers) that the vessel is licensed to carry ("permitted number of persons");
- (b) Class I vessels, as well as Class IV vessels carrying more than 12 passengers and letting for hire or reward must carry on board a quantity of infant lifejackets that is not less than 2.5% of total number of passengers that the vessel is licensed to carry ("permitted number of passengers"); and
- (c) floating restaurants satisfying certain conditions are required to carry on board a quantity of lifejackets (excluding infant lifejackets) that is not less than 50% of the permitted number of persons and a quantity of infant lifejackets that is not less than 1.25% of the permitted number of passengers.

12. Other amendments made by L.N. 154 relate to the following matters:

- (a) amendments made to Schedules 2 and 3 to Cap. 548G consequential to the introduction of the above requirements regarding provision of lifejackets on local vessels; and

- (b) amendments made to Schedules 3 and 4 to Cap. 548G to reorganize the minimum requirements regarding the provision of life-saving appliances and fire-fighting apparatus on certain local vessels.

13. A two-year transitional period beginning on 23 December 2019 is provided under L.N. 154 for vessels which comply with the life-saving and fire-fighting apparatus requirements set out in Cap. 548G immediately before it is amended by L.N. 154. Such vessels are taken to be in compliance with the new requirements provided under L.N. 154 during the transitional period.

L.N. 155

14. L.N. 155 amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) by adding a new Part 10A (sections 91A to 91K) to Cap. 548F to provide for passenger safety measures during major events at sea². The major measures are summarized below:

- (a) The Director of Marine may specify, by notice, an area of the waters of Hong Kong and a certain period for the purposes of a major event at sea (known as "specified area" and "specified period") and issue directions or instructions for such purposes. The new section 91C(4) of Cap. 548F provides that the notice is not subsidiary legislation;
- (b) The coxswain of a local vessel must comply with certain requirements relating to passenger safety during major events at sea when the vessel is present in a specified area during the specified period. These include requiring children under the age of 12 to be accompanied by an adult ("accompanying adult") while on board the vessel, distributing suitable lifejackets to the accompanying adult and keeping a list of personal details of the passengers on board the vessel; and
- (c) The accompanying adult must ensure that while the vessel remains in the specified area during the specified period, the accompanied child wears a suitable lifejacket, or in the case where the adult accompanies an infant, ensure that the infant's safety is not prejudiced if the infant does not wear the suitable lifejacket distributed.

15. The requirements provided in the new Part 10A do not apply to local vessels that are in use for a franchised service or licensed service under the Ferry Services Ordinance (Cap. 104), local vessels that are made fast to the shore or are berthed, moored, anchored or secured in a typhoon shelter.

² The term "major event at sea" is defined in L.N. 155 to mean a presence of local vessels in an area of the waters of Hong Kong that, in the opinion of the Director of Marine, may substantially increase the risk of marine accident.

16. Under L.N. 155, it is an offence if any of the requirements referred to in paragraph 14(b) and (c) above is contravened without reasonable excuse, and the accompanying adult or coxswain, as the case requires, is liable on conviction to a fine at level 2 (i.e. \$5,000).

17. According to paragraph 12 of the LegCo Brief (with no file reference) issued by the Transport and Housing Bureau and Marine Department in October 2019, the Administration has consulted the Local Vessels Advisory Committee and relevant trade associations on the relevant legislative proposal from 2016 to 2018 and they supported the proposal. Members may refer to the LegCo Brief for further information.

18. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 19 December 2018 on the legislative proposals to enhance marine safety, including strengthening the existing requirement for the provision of lifejackets on local vessels and enhancing safety measures during major events at sea. Members were generally supportive of the proposals. Issues on the number and ratio of lifejackets for adults, children and infants to be provided on board as well as the implementation of the new requirements were discussed.

19. L.N. 154 and L.N. 155 come into operation on 23 December 2019.

PART III DECLARATION OF MONUMENTS AND HISTORICAL BUILDINGS

Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2019

(L.N. 156)

20. L.N. 156 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 and with the approval of the CE. It declares:

- (a) the rock carving and adjoining land at Cape Collinson to be a monument for the purposes of Cap. 53; and
- (b) Yuk Hui Temple at Wanchai, Hong Kong and Hau Mei Fung Ancestral Hall at Kam Tsin, Sheung Shui, New Territories to be historical buildings under Cap. 53.

21. As historical building is a type of monument as defined in section 2 of Cap. 53, the effect of L.N. 156 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 of \$100,000 and imprisonment for one year.

22. According to paragraphs 13, 15 and 16 of the LegCo Brief issued by the Development Bureau dated 24 October 2019 (File Ref: DEVB/CHO/1B/CR/141), Yuk Hui Temple and Hau Mei Fung Ancestral Hall have been accorded with Grade 1 status which denotes their outstanding heritage value. As these buildings are currently situated on private lands, notices have been served on the owners and lawful occupiers of the building concerned and explicit agreements to the declaration proposal have also been obtained from these owners. Further, as the rock carving is situated on government land, explicit agreement to the declaration proposal has been obtained from the Lands Department. Members may refer to the LegCo Brief for further information.

23. As advised by the Clerk to the Panel on Development, the Administration has not briefed the Panel on L.N. 156.

24. L.N. 156 came into operation on the date of its publication in the Gazette, i.e. 25 October 2019.

Part IV SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions (Democratic Republic of the Congo) Regulation 2019 (L.N. 157)

United Nations Sanctions (South Sudan) Regulation 2019 (L.N. 158)

25. L.N. 157 and L.N. 158 are made by the CE under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. They came into operation when published in the Gazette on 25 October 2019.

L.N. 157

26. Since 2003, the Security Council of the United Nations ("UNSC") has adopted several resolutions ("UNSCRs") to impose sanctions against the Democratic Republic of the Congo ("Congo") for its involvement in military activities that caused instability in the region. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Democratic

Republic of the Congo) Regulation 2018 (Cap. 537CE) which expired at midnight on 1 July 2019.

27. L.N. 157 implements certain decisions of UNSCR 2478 (2019) adopted by UNSC on 26 June 2019 to renew the sanctions against Congo. It provides for, among other things, prohibitions against:

- (a) the supply, sale, transfer or carriage of arms or related materiel to persons operating in the territory of Congo;
- (b) the provision of assistance, advice or training related to military activities to persons operating in the territory of Congo;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (e) entry into or transit through the HKSAR by certain persons.

28. The above prohibitions will expire at midnight on 1 July 2020.

29. Members may refer to LegCo Brief (File Ref: CITB CR75/53/4) issued by the Commerce and Economic Development Bureau ("CEDB") in October 2019 for further information. A marked-up version showing the changes made by L.N. 157 to Cap. 537CE is at Annex F to the LegCo Brief.

L.N. 158

30. Since March 2015, UNSC has adopted several UNSCRs to impose sanctions against South Sudan. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (South Sudan) Regulation 2018 (Cap. 537CC) which expired at midnight on 31 May 2019.

31. L.N. 158 implements certain decisions of UNSCR 2471 (2019) adopted by UNSC on 30 May 2019 to renew the sanctions against South Sudan. It provides for, among other things, prohibitions against:

- (a) the supply, sale, transfer or carriage of arms or related materiel to South Sudan;

- (b) the provision of technical assistance, training or financial or other assistance related to military activities to persons operating in the territory of South Sudan;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (e) entry into or transit through HKSAR by certain persons.

32. The above prohibitions will expire at midnight on 31 May 2020.

33. Members may refer to LegCo Brief (File Ref: CITB CR75/53/5/1) issued by CEDB in October 2019 for further information. A marked-up version showing the changes made by L.N. 158 to Cap. 537CC is at Annex E to the LegCo Brief.

Other matters

34. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3 of Cap. 537. Therefore, L.N. 157 and L.N. 158 are not required to be tabled in LegCo and are not subject to amendment by LegCo. However, since they come within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("Subcommittee"), Members may consider referring L.N. 157 and L.N. 158 to the Subcommittee for its consideration.

35. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 157 and L.N. 158 have been circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)60/19-20 on 25 October 2019.

PART V NON-LEGISLATIVE INSTRUMENT

Eighth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences

(S.S. No. 5 to Gazette No. 43/2019)

36. The Eighth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences ("Eighth TM") is issued by the Secretary for the Environment ("SEN") under section 26G of the Air Pollution Control Ordinance (Cap. 311). The Eighth TM, which supersedes the Seventh Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences ("Seventh TM"), allocates for each emission year from 1 January 2024 the quantities of emission

allowances for three specified pollutants, namely sulphur dioxide ("SO₂"), nitrogen oxides ("NO_x") and respirable suspended particulates ("RSP") for each of the four power plants³ and possible new electricity works in Hong Kong. It also requires SEN to review the quantity of emission allowances for each type of specified pollutant for each specified licence set out or determined in accordance with the Eighth TM not less than once every two years after its commencement.

37. Under section 37B(6) of Cap. 311, the Eighth TM is not subsidiary legislation. However, it is subject to a scrutiny mechanism which is similar to that for subsidiary legislation provided in section 34 of Cap. 1, i.e. the negative vetting procedure. Under section 37C of Cap. 311, the Eighth TM shall commence to have effect upon the expiry of the 28-day initial amendment period or the period as extended if LegCo does not pass a resolution to amend it. In the case where LegCo passes a resolution amending the Eighth TM, it shall commence to have effect on the day of the publication in the Gazette of such resolution.

38. According to paragraph 16 of the LegCo Brief (with no file reference) issued by the Environmental Protection Department in October 2019, as compared with the emission allowances for 2022 set under the Seventh TM, the Eighth TM will see a further tightening of about 40% for SO₂, 29% for NO_x and 20% for RSP for the electricity sector.

39. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 28 October 2019 on matters covered by the Eighth TM. Members did not object to the making of the Eighth TM. The Panel discussed the implications of tightening emission allowances for power plants on electricity tariff and the projected reductions in emissions from the power plants, etc.

Concluding observations

40. The Legal Service Division is scrutinizing L.N. 150 to L.N. 151, L.N. 154 to L.N. 155, L.N. 157 to L.N. 158, and will report further if necessary. No difficulties have been identified in the legal and drafting aspects of L.N. 152, L.N. 153, L.N. 156, and S.S. No. 5 to Gazette No. 43/2019.

Prepared by

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³ The four existing power plants are: Lamma Power Station and Lamma Power Station Extension, Black Point Power Station, Castle Peak Power Station and Penny's Bay Gas Turbine Power Station.