

**立法會**  
***Legislative Council***

LC Paper No. LS126/19-20

**Further Report by Legal Service Division on  
Medical Laboratory Technologists (Special Exemptions)  
Regulation (L.N. 153) Gazetted on 7 August 2020**

Members may recall from LC Paper No. LS117/19-20 dated 14 September 2020 and issued to Members vide LC Paper No. CB(2)1488/19-20 that the Legal Service Division ("LSD") has made enquiries with the Administration on certain matters relating to L.N. 153. LSD's enquiries and the Administration's response at Annex are summarized below.

2. To recap, L.N. 153 is made by the Secretary for Food and Health under section 29(1A) of the Supplementary Medical Professions Ordinance (Cap. 359) to exempt (a) a member of the National accredited laboratory testing personnel arranged by the National Health Commission of the People's Republic of China ("specified person") to conduct nucleic acid tests for detecting COVID-19 ("specified tests") in Hong Kong for the Government from section 21(1) of Cap. 359 regarding the offence for non-compliance with the registration requirement for the profession of medical laboratory technologist ("MLT") ("specified profession"); and (b) a registered company carrying on the business of practising the specified profession ("specified company") from section 20 of Cap. 359 in respect of the specified profession for employing a specified person to conduct specified tests for the Government. L.N. 153 came into operation on 8 August 2020 and expires at midnight on 7 October 2020.

Justifications for granting exemptions

3. In response to LSD's enquiry on the justifications for granting the above exemptions and whether consultation had been conducted with the relevant professional bodies, the Administration has explained that since Hong Kong did not have sufficient laboratory testing personnel with adequate training and experience to perform the specified tests to meet the urgent need to implement the Universal Community Testing Programme, the Government considers it necessary to allow laboratory testing personnel who possess relevant testing experience from the Mainland to come to Hong Kong to assist in performing the specified tests for a limited period of time. As to consultation, the Administration stated that representatives of the Food and Health Bureau met with the Chairman of Supplementary Medical Professions Council and members of the Medical Laboratory Technologists Board on 31 July 2020.

Qualifications, experience or training required of specified persons

4. In relation to LSD's enquiries on the qualifications, experience or training required for qualifying as a specified person for conducting the specified tests in Hong Kong for the Government, the Administration has replied that the specified persons who possess adequate training and experience in testing COVID-19 are accredited by the National Health Commission for conducting the specified tests.

Mechanisms to deal with complaints against specified persons

5. Noting that the specified persons are not required to register as MLTs in Hong Kong, LSD has asked the Administration to explain whether there would be any mechanisms for dealing with complaints against the specified persons in relation to their conduct of the specified tests. The Administration has responded that as the specified persons are exempt from the local registration, they are not subject to the disciplinary mechanism under the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359A). Should there be any complaint against the specified persons in relation to their misconduct or neglect in any professional respect, the Government will report such cases to the National Health Commission.

Whether specified companies should be exempt from section 21(2) of Cap. 359

6. Under section 21(2) of Cap. 359, any person who employs any other person to practise a profession to which Cap. 359 relates when the second-mentioned person is not registered in respect of that profession commits an offence. In response to LSD's enquiry on whether a specified company which employs specified persons (who are not registered MLTs) should also be exempt from the application of section 21(2), the Administration stated that it is not necessary to grant such exemption as the offence of a corporation, including a company employing an unregistered person to practise the specified profession, has already been covered in section 20(4) of Cap. 359. The Administration considers that the offence in section 21(2) is intended to apply to a natural person, not to a corporation.

7. Subject to Members' views on the matters set out in paragraphs 3 to 6 above, no legal and drafting difficulties have been identified in relation to L.N. 153.

Encl

Prepared by

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28 September 2020



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Food and Health Bureau, Government Secretariat  
The Government of the Hong Kong Special Administrative Region  
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16 September 2020

Ms Vanessa CHENG,  
Assistant Legal Advisor  
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Legislative Council Complex  
1 Legislative Council Road  
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Hong Kong

Dear Vanessa,

**Medical Laboratory Technologists (Special Exemptions) Regulation  
(L.N. 153 of 2020)**

I refer to your captioned letters dated 14 and 20 August 2020. Our consolidated reply is as follows –

**Re. your letter dated 14 August 2020**

(1)

Given the urgent need to carry out large-scale COVID-19 testing as early as possible in the shortest possible time to protect public health amidst the third wave epidemic, a large number of experienced testing personnel is required. The representatives of the Food and Health Bureau met with the Chairman of

Supplementary Medical Professions Council and members of the Medical Laboratory Technologists (MLT) Board on 31 July 2020. Having regard to the scale of the testing involved, it was noted that Hong Kong did not have sufficient laboratory testing personnel with adequate training and experience to perform COVID-19 testing to meet the urgent need to implement the Universal Community Testing Programme (UCTP). The Government considers it necessary to allow laboratory testing personnel who possess relevant testing experience from the Mainland to come to Hong Kong to assist in performing COVID-19 tests for a limited period of time so as to carry out the UCTP.

(2)

The specified personnel who possess adequate training and experience on testing COVID-19 are accredited by the National Health Commission of the Central People's Government for conducting the specified tests.

(3)

As these specified persons are exempted from the local registration, they are not subject to the disciplinary mechanism under the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359A). Should there be any complaint against the specified persons in relation to their misconduct or neglect in any professional respect, the Government will report such cases to the National Health Commission.

**Re. your letter dated 20 August 2020**

The question is whether a specified company should also be exempted from the application of section 21(2) of Cap. 359 which provides that any person who employs any other person to practise a profession to which Cap. 359 relates when the second-mentioned person is not registered in respect of that profession commits an offence. It is noted that the offence of a corporation, including a company employing an unregistered person to practise the profession of MLT has already been covered in section 20(4). It is unlikely in such circumstances that the offence of employing an unregistered person to practise the profession of MLT under section 21(2) will again cover a corporation/company. It is also noted that in the exemptions under Schedule 4 to the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359A), an institution carried on by a corporation is only exempted from section 20 but not from section 21(2) and the only entity who is exempted from section 21(2) is a natural person, namely a veterinary surgeon. This further affirms that a corporation/company is not covered in section 21(2). We therefore consider

that it is not necessary to exempt a specified company from the application of section 21(2) of Cap. 359.

Should you have any enquiries, please contact the undersigned.

Yours sincerely,



( Ricky WU )  
for Secretary for Food and Health

c.c. DoJ (Attn.: Ms. Rayne CHAI (SALD)  
Mr. Wallace NG (GC)) (By email: ldd@doj.gov.hk )  
Legal Adviser  
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