

立法會
Legislative Council

LC Paper No. LS31/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 13 December 2019**

Tabling in LegCo : Council meeting of 18 December 2019

Amendment to be made by : Council meeting of 15 January 2020 (or that of 12 February 2020 if extended by resolution)

PART I RATES CONCESSION

Rating (Exemption) Order 2019 (Amendment) Order 2019 (L.N. 183)

By the Rating (Exemption) Order 2019 (L.N. 28 of 2019) (which came into operation on 1 April 2019), the Chief Executive ("CE") in Council declared that all tenements are exempted from the payment of rates up to a maximum of \$1,500 for each quarter in the year starting on 1 April 2019 and ending on 31 March 2020. The amount of \$1,500 is reduced proportionately if rates are payable for only part of a concessionary period.

2. L.N. 183 is made by CE in Council under section 36(2) of the Rating Ordinance (Cap. 116) to amend L.N. 28 of 2019 to enhance the rates exemption for non-domestic tenements for the period beginning on 1 January 2020 and ending on 31 March 2020 ("that period"). The effect of the amendment is that the exemption ceiling for non-domestic tenements for that period will become \$5,000. The amount of \$5,000 is reduced proportionately if rates are payable for only part of that period.

3. "Non-domestic tenement" is defined to mean a tenement that is not used, or not intended to be used, wholly or primarily for domestic purposes. In reply to the Legal Service Division ("LSD")'s enquiries on whether a hotel, guesthouse, dormitory, home for elderly persons, home for persons with disabilities, child care centre or nursery or other similar establishments would be considered as "non-domestic tenements" for the purposes of L.N. 183, the Administration has replied that these establishments would be classified as "non-domestic tenements" according to their mode and character of the occupation when such tenements are occupied for the purpose of certain business activities or social services. Regarding the factors for determining whether a tenement is used "primarily for domestic purposes" as referred to in the definition of "non-domestic tenement", in particular, if the tenement is partly used for domestic purposes and partly used for non-domestic purposes, the Administration has replied that the Rating and Valuation Department will determine whether the tenement is used "primarily for domestic purposes" having regard to the mode and character of occupation of the unit. If the extent of

business activities carried out within a residential unit does not alter the primary mode and character of occupation for dwelling purpose, the unit will still be classified as a "domestic tenement".

4. According to paragraph 3 of the Legislative Council ("LegCo") Brief (File Ref: TsyB R 183/535-1/7/0 (19-20)(C)) issued by the Financial Services and the Treasury Bureau in December 2019, the provision of an enhanced rates concession to non-domestic tenements in L.N. 183 is included in the package of relief measures as announced by the Financial Secretary on 4 December 2019 to support enterprises with a view to countering the challenging external economic environment and softening local economy.

5. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 183.

6. L.N. 183 came into operation on the day on which it was published in the Gazette, i.e. 13 December 2019.

PART II PHARMACY AND POISONS

Pharmacy and Poisons (Amendment) (No. 5) Regulation 2019 (L.N. 184)

7. L.N. 184 is made by the Pharmacy and Poisons Board ("PPB") under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health. It amends the Pharmacy and Poisons Regulations (Cap. 138A) by:

- (a) adding nine items and two sub-items¹ of substances to Division A of Schedule 1, Division A of Schedule 3 and Division A of Part 1 of the Poison List set out in Schedule 10 to Cap. 138A ("Poisons List");
- (b) amending the existing item of substance "Etidronic acid; its salts" to "Etidronic acid; its salts; when contained in pharmaceutical products" in each of the Divisions mentioned in subparagraph (a) above; and
- (c) removing one sub-item "Pentoxifylline" from the item relating to "Pharmaceutical products for human parenteral administration" in each of the Divisions mentioned in subparagraph (a) above.

8. The effect of L.N. 184 is that the newly added substances are subject to restrictions with respect to their sale, supply, labelling and storage, and that they can

¹ The nine items are: (a) Abemaciclib; its salts; (b) Cannabidiol; its salts; when contained in pharmaceutical products; (c) Gemtuzumab ozogamicin; (d) Larotrectinib; its salts; (e) Nicardipine; its salts; (f) Pentoxifylline; its salts; (g) Risankizumab; (h) Semaglutide; and (i) Sodium zirconium cyclosilicate. The two sub-items are: (i) Indigo carmine and (ii) Epoprostenol relating to items "Pharmaceutical products for human parenteral administration" and "Prostaglandins" respectively.

only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Further, the inclusion of the newly added substances in the Poisons List means that they can only be sold on registered premises of an authorized seller of poisons by a registered pharmacist or in the presence and under the supervision of a registered pharmacist.

9. According to paragraph 5 of the LegCo Brief (File Ref: FHB/H/23/4) issued by the Food and Health Bureau in December 2019, PPB considers the amendments appropriate in view of the potency, toxicity and potential side effects of the substances. Members may refer to Annex B to the LegCo Brief for details of the substances.

10. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 184.

11. Save for sections 3(7) and (9), 4(7) and (9), and 5(7) and (9) (collectively "the remaining sections"), L.N. 184 came into operation on the day on which it was published in the Gazette, i.e. 13 December 2019. The remaining sections, which relate to the addition of substance "Pentoxifylline; its salts" and the removal of the sub-item "Pentoxifylline" from the item relating to "Pharmaceutical products for human parenteral administration", come into operation on 13 December 2020. According to footnote 2 of the LegCo Brief, the later commencement of the remaining sections would give affected registration certification holders sufficient time to recall the affected products from the market and to re-label the affected products to comply with the labelling requirements due to changes in sales control.

PART III MARINE PARKS

**Marine Parks and Marine Reserves (Amendment)
Regulation 2019** (L.N. 185)

Marine Parks (Designation) (Amendment) Order 2019 (L.N. 186)

L.N. 185

12. Under section 3 of the Marine Parks and Marine Reserves Regulation (Cap. 476A), a person may only fish in or from a marine park² if he is the holder of a permit granted in accordance with section 17(3) of Cap. 476A. Section 17(3) of Cap. 476A provides that the Country and Marine Parks Authority (i.e. the Director of Agriculture, Fisheries and Conservation) ("Authority") may grant a permit for fishing to a bona fide fisherman or to a person who ordinarily resides near a marine park to which the permit relates.

² Currently, there are five marine parks in Hong Kong. They are Hoi Ha Wan Marine Park, Yan Chau Tong Marine Park, Sha Chau and Lung Kwu Chau Marine Park, Tung Ping Chau Marine Park, and The Brothers Marine Park.

13. L.N. 185 is made by the Secretary for the Environment ("SE") under section 20 of the Marine Parks Ordinance (Cap. 476) to amend Cap. 476A to:

- (a) provide that no new permit for fishing in or from a specified marine park (i.e. Hoi Ha Wan Marine Park, Yan Chau Tong Marine Park, Sha Chau and Lung Kwu Chau Marine Park and Tung Ping Chau Marine Park) will be granted to a bona fide fisherman with effect from 1 April 2020. The existing arrangement for granting a permit, to the fisherman for fishing in other marine parks, and to a person who ordinarily resides near a marine park to which the permit relates for fishing in or from the marine park would remain unchanged; and
- (b) provide for transitional arrangement to the effect that the permit already granted to a bona fide fisherman for fishing in or from a specified marine park may be renewed by the Authority under section 17(4) of Cap. 476A provided that the validity period of the renewed permit expires before 1 April 2022.

14. In reply to LSD's enquiries on L.N. 185, the Administration has replied as follows:

- (a) a person who involves in the fisheries industry and owns a fishing vessel locally registered under the Fisheries Protection Ordinance (Cap. 171) would be considered as a "bona fide fisherman" in the amended section 17(3)(a) of Cap. 476A;
- (b) in determining whether a person "ordinarily resides near a marine park" under the amended section 17(3)(b) of Cap. 476A, the Administration would take into account whether the residence of the person is in close proximity to the marine park concerned, whether the person resided near the marine park prior to the designation of the subject marine park, and whether the person is residing near the marine park at the time he or she applies for the permit; and
- (c) the Administration considers it not necessary to provide for the criteria and factors in (a) and (b) above in L.N. 185 as these matters have all along been made known to the relevant stakeholders since the introduction of the marine park fishing permit system in 1996 through various means. These include conducting briefing sessions for the relevant stakeholders, distributing notices on the permit application procedure and guidelines during the briefing sessions and, providing a dedicated hotline to answer enquiries. The Administration would provide information on eligibility criteria on the webpage of the Agriculture, Fisheries and Conservation Department ("AFCD") and conduct briefings for the relevant stakeholders to explain the eligibility criteria and procedure for permit application upon the designation of a new marine park in future.

15. According to paragraphs 15 and 16 of the LegCo Brief (File Ref: EP CR 9/15/20) issued by the Environment Bureau ("EB") and AFCD on 11 December 2019, stakeholder engagement sessions were conducted in 2017 and 2018 to solicit views from relevant stakeholders. They generally accepted the new fisheries management strategy in marine parks. AFCD briefed fishermen representatives and the affected marine park fishing permit holders ("affected permit holders") between mid-2018 and the first half of 2019 on the proposed strategy, the proposed ex-gratia allowance ("EGA") to be granted to the affected permit holders and the transitional arrangement. They generally supported the proposed strategy and arrangement.

16. As advised by the Clerk to the Panel on Environmental Affairs ("EA Panel"), the Panel was consulted at its meeting on 25 November 2019 on the proposal to implement a commercial fishing ban in the specified marine parks. While members did not raise objection to the proposal, there was a view that the scope of the fishing ban was rather limited from the perspective of conservation. The EA Panel discussed the coverage and enforcement of the commercial fishing ban, transitional arrangements, and mechanism for handling applications for EGA payable to affected permit holders.

17. L.N. 185 comes into operation on 1 April 2020.

L.N. 186

18. L.N. 186 is made by CE under section 15 of Cap. 476 after consultation with the Executive Council to amend the Marine Parks (Designation) Order (Cap. 476B) to designate the Southwest Lantau Marine Park ("SWLMP") to be a marine park under Cap. 476. The effect of the designation is that the control and management of SWLMP shall be vested in the Authority. Under section 4 of Cap. 476, the duties of the Authority include taking such measures as the Authority considers necessary for the purposes of protecting, restoring and enhancing the marine life in and marine environment of any marine park.

19. As stated in paragraph 10 of the LegCo Brief (File Ref: EP CR 9/15/20) issued by EB and AFCD on 11 December 2019, the Administration had engaged the relevant stakeholders prior to the commencement of the statutory process in relation to the designation of SWLMP as a new marine park, and launched the stakeholders and public consultation in 2015. The relevant stakeholders generally supported the boundary and management plan of SWLMP. The Authority has proceeded with the statutory designation process under Cap. 476 including conducting a hearing of two received objections.³ The Country and Marine Parks Board rejected the objections

³ According to paragraphs 4 and 10 and footnote 2 of the LegCo Brief, an objection hearing was conducted on 20 October 2017 under section 12 of Cap. 476. The two objections mainly involved the proposal to remove the waters nearby Fan Lau Tsuen from SWLMP to allow villagers to fish, to exempt some waters from vessel speed limit control for navigational safety, and the worry about the constraints for future village house development imposed by control on effluent discharge.

after the hearing and considered that no amendment to the draft map of SWLMP was necessary.

20. As advised by the Clerk to the EA Panel, the Panel was not consulted specifically on L.N. 186. When the Administration consulted the Panel on the measures of the new fisheries management strategy in marine parks at the meeting on 25 November 2019, it informed members of the location of the marine parks (including SWLMP) which would implement such measures via the paper (Annex to LC Paper No. CB(1)138/19-20(03)). Members did not raise any questions or comments on matters related to SWLMP.

21. L.N. 186 comes into operation on 1 April 2020.

PART IV WASTE DISPOSAL

**Waste Disposal (Designated Waste Disposal Facility)
Regulation (Amendment of Schedule 1) Notice 2019 (L.N. 187)**

**Waste Disposal (Charges for Disposal of Construction Waste)
Regulation (Amendment of Schedules 1 and 4) Notice 2019 (L.N. 188)**

22. Schedule 1 to the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) specifies the designated waste disposal facilities ("DWDFs"). Part 1 of Schedule 1 and Part 1 of Schedule 4 to the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N) respectively specify the landfills and public fill reception facilities. South East New Territories (SENT) Landfill ("SENT Landfill") and Tseung Kwan O Area 137 Fill Bank ("TKO Fill Bank") are two of the DWDFs specified in Schedule 1 to Cap. 354L. SENT Landfill is a landfill whereas the TKO Fill Bank is a public fill reception facility specified in Part 1 of Schedule 1 and Part 1 of Schedule 4 respectively to Cap. 354N.

23. L.N. 187 and L.N. 188 are made by SE under section 8 of Cap. 354L and section 23 of Cap. 354N respectively to amend Schedule 1 to Cap. 354L, and Part 1 of Schedule 1 and Part 1 of Schedule 4 to Cap. 354N respectively to update the address and drawing number of SENT Landfill, and to update the plan number of TKO Fill Bank. L.N. 187 also amends Schedule 1 to Cap. 354L to remove another DWDF, namely Kowloon Bay Transfer Station (KBTS) ("KBTS"), from that Schedule.

24. According to paragraphs 3 to 7 of the LegCo Brief (File Ref: EP/EID/193/08/C/15) issued by EB and the Environmental Protection Department on 11 December 2019, the updates in relation to the SENT Landfill and the TKO Fill Bank in L.N. 187 and L.N. 188 are made to reflect the changes in their boundaries due to the additional 13 hectares of land (carved out from the adjacent TKO Fill Bank) required for the extension of SENT Landfill. The plan of the TKO Fill Bank is also required to be updated as another piece of land in TKO Fill Bank is to be carved out

for construction of the Water Supplies Department's first stage of desalination plant. KBTS is removed from Schedule 1 to Cap. 354L as it has not been used for waste transfer since 2005 and is scheduled for demolition in 2020.

25. As advised by the Clerk to the EA Panel, the Panel was not consulted specifically on L.N. 187 and L.N. 188. The Administration informed the Panel of the proposed amendments via the paper issued for the policy briefing on 28 October 2019 (Annex to LC Paper No. CB(1)31/19-20(03)). Members did not raise any questions or comments on the proposed amendments at the briefing.

26. L.N. 187 and L.N. 188 come into operation on 28 February 2020.

PART V SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

Carriage by Air (Revision of Limits of Liability) (Montreal Convention) Notice 2019 (L.N. 189)

27. The Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999 ("Montreal Convention") is an international instrument governing carriers' liability for injury or death of passengers, damage or loss of baggage and cargo and losses caused by delays. The Montreal Convention is implemented in Hong Kong through the Carriage by Air Ordinance (Cap. 500). Its provisions are set out in Schedule 1A to Cap. 500. Under section 21(1) of Cap. 500, where the limits of liability specified in Article 21, 22 or 23 of the Montreal Convention have been revised in accordance with Article 24, the Director-General of Civil Aviation ("DGCA") shall, by notice published in the Gazette, announce such revision.

28. L.N. 189 is made by DGCA under section 21(1) of Cap. 500. It announces the revision of the limits of liability specified in Articles 21 and 22 of the Montreal Convention by an increase of 13.9% effective from 28 December 2019 pursuant to a regular review conducted by the International Civil Aviation Organization ("ICAO") every five years. The last revision was made in 2009. Details of the revision made by L.N. 189 are set out below:

- (a) the limit of liability for each passenger for damage sustained in case of death or bodily injury of a passenger is increased from 113 100 Special Drawing Rights ("SDRs") (i.e. units of account used by the International Monetary Fund)⁴ to 128 821 SDRs;

⁴ Article 23 of the Montreal Convention provides that the sums mentioned in terms of SDR in the Montreal Convention shall be deemed to refer to SDR as defined by the International Monetary Fund.

- (b) the limit of liability for each passenger in relation to damage caused by the delay in the carriage of persons is increased from 4 694 SDRs to 5 346 SDRs;
- (c) the limit of liability for each passenger in case of destruction, loss, damage or delay in relation to the carriage of baggage is increased from 1 131 SDRs to 1 288 SDRs; and
- (d) the limit of liability in case of destruction, loss, damage or delay in relation to the carriage of cargo is increased from 19 SDRs per kilogramme to 22 SDRs per kilogramme.

29. Section 21(3) of Cap. 500 provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to a notice published under section 21(1) of Cap. 500. Accordingly, L.N. 189 is not required to be tabled in LegCo and is not subject to amendment by LegCo.

30. According to paragraph 11 of the LegCo Brief, airlines operating scheduled services to and from Hong Kong, including all Air Operators' Certificate holders and the Board of Airline Representatives in Hong Kong, have been notified of the review of the limits of liability conducted by ICAO and the revision to the limits of liability. No objection has been received.

31. As advised by the Clerk to the Panel on Economic Development, the Panel has not been consulted specifically on L.N. 189.

Concluding observations

32. Subject to Members' views on the matters set out in paragraphs 3 and 14 above, no difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

CHENG Kiu-fung, Vanessa
Assistant Legal Adviser
Legislative Council Secretariat
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