

立法會
Legislative Council

LC Paper No. LS33/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 December 2019**

Tabling in LegCo : Council meeting of 8 January 2020

Amendment to be made by : Council meeting of 15 January 2020 (or that of 26 February 2020 if extended by resolution)

Exemption from Profits Tax (Feed-in Tariff Scheme) Order (L.N. 190)

Business Registration (Amendment) Regulation 2019 (L.N. 191)

L.N. 190 is made by the Chief Executive ("CE") in Council under section 87 of the Inland Revenue Ordinance (Cap. 112) to exempt an individual from the payment of profits tax chargeable under Part 4 of Cap. 112 in respect of sums received by, or accrued to, the individual as payment by CLP Power Hong Kong Limited ("CLP") or The Hongkong Electric Company, Limited ("HKE") for the purchase of electricity generated in the course of a qualifying Feed-in Tariff business ("qualifying FiT business") carried on by the individual.

2. A qualifying FiT business, pursuant to section 4 of L.N. 190, is the participation by an individual in a Feed-in Tariff Scheme, i.e. a scheme administered by CLP or HKE in accordance with the Scheme of Control Agreement made between the Government and CLP or HKE on 25 April 2017 and under which CLP or HKE may purchase electricity generated by a renewable energy ("RE") system installed on residential premises in specified circumstances.

3. The exemption provided for in L.N. 190 applies in relation to profits tax chargeable for the year of assessment commencing on 1 April 2018 and for all subsequent years of assessment.

4. L.N. 191 is made by the Secretary for Financial Services and the Treasury under section 14(1A)(g) of the Business Registration Ordinance (Cap. 310). It amends regulation 8 of the Business Registration Regulations (Cap. 310A) to exempt a qualifying FiT business from all the provisions of Cap. 310, including the requirements to apply for business registration and to pay the prescribed business registration fee and levy.

5. L.N. 190 and L.N. 191 are made to implement the Government's legislative proposals included in the 2018 Policy Agenda (page 130) to exempt individuals who install small RE systems at their residential premises from the requirements of applying for business registration and filing profits tax returns.

6. It is not mentioned in the Legislative Council ("LegCo") Brief (File Ref: ENB CR 1/3231/19) issued by the Environment Bureau in December 2019 whether public consultation has been conducted on the exemption proposals.

7. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 23 April 2018 on the implementation details concerning RE, including the proposed exemptions of individuals who installed RE systems at their residential premises from the payment of profits tax under Cap. 112 and the provisions of Cap. 310. At the meeting on 22 October 2018, the Administration further briefed the Panel on the proposals. Panel members basically supported the direction to promote the development of RE but asked the Administration to consider providing further support and facilitation to individuals and organizations wishing to develop RE, such as relaxation of the regulatory requirements for installation of RE systems at different types of buildings or premises. Members also discussed the implementation arrangements for the Feed-in Tariff Scheme and its implications on tariff.

8. L.N. 190 and L.N. 191 come into operation on 1 March 2020.

**Merchant Shipping (Prevention of Air Pollution)
(Amendment) (No. 2) Regulation 2019 (L.N. 192)**

9. L.N. 192 is made by the Secretary for Transport and Housing under sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). It amends the Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413P) to give effect to the relevant amendments made to Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973 ("MARPOL Annex VI") as adopted by the International Maritime Organization ("IMO").¹

10. L.N. 192 amends Cap. 413P to the effect that the sulphur content of any fuel oil used, or carried for use, on board a ship engaged in international voyages must not exceed the limit set out in Regulation 14.1 of MARPOL

¹ MARPOL Annex VI sets out the requirements for preventing air pollution from ships. In Hong Kong, the requirements of MARPOL Annex VI are implemented via Cap. 413P.

Annex VI². For a ship engaged in non-international voyages, the relevant sulphur content must not exceed 0.50% mass per mass.

11. L.N. 192 also makes consequential amendments to, and repeals a spent provision (section 46(1)) of, Cap. 413P.

12. Pursuant to sections 31(1) and 56(1) of Cap. 413P, contravention of the requirements mentioned in paragraph 10 above by the owner or the master of a ship is an offence punishable by a fine at level 6 (i.e. \$100,000) on conviction on indictment and at level 3 (i.e. \$10,000) on summary conviction.

13. It is noted that pursuant to section 3A of Cap. 413, a direct reference approach has been adopted in L.N. 192 by referring directly to MARPOL Annex VI, as in force from time to time. According to paragraph 6 of the LegCo Brief (File Ref: THB(T)PML CR8/10/90/1) issued by the Transport and Housing Bureau and Marine Department ("MD") in December 2019, this approach allows local legislation to be kept up-to-date as far as practicable.

14. According to paragraph 10 of the LegCo Brief, the Administration consulted the Hong Kong Fleet Operation Advisory Committee and the Local Vessels Advisory Committee of MD in April and September 2019 respectively and members of both Committees supported the proposal.

15. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 10 December 2019 on a series of legislative proposals to incorporate the latest requirements of IMO into local legislation, including L.N. 192. Members were generally supportive of the proposals. Issues on mechanism of consultation with the affected parties and implementation of the legislative proposals were discussed.

16. L.N. 192 comes into operation on 1 March 2020.

**Statutes of the University of Hong Kong (Amendment)
Statute 2019**

(L.N. 193)

17. L.N. 193 is made by CE in her capacity as the Chancellor of the University of Hong Kong ("HKU")³ under section 13(2) of the University of Hong Kong Ordinance (Cap. 1053) on the recommendation of the Court of

² The current limit under Regulation 14.1 is 0.50% m/m.

³ Under section 12(3) of the University of Hong Kong Ordinance (Cap. 1053), CE shall be the Chancellor of HKU.

HKU. It amends Statute III of the Statutes of HKU in the Schedule to Cap. 1053 to add three bachelors⁴ and three masters degrees⁵ which may be conferred by HKU.

18. According to paragraph 4 of the LegCo Brief (no reference number) issued by HKU in December 2019, the degrees are added in recognition of the rising needs of academic education and training in the respective disciplines.

19. According to paragraph 5 of the LegCo Brief, HKU has consulted the relevant parties on L.N. 193. Upon our enquiry, HKU has confirmed that its relevant departments and faculties, Senate and Council have approved the amendments referred to in L.N. 193.

20. As advised by the Clerk to the Panel on Education, the Panel has not been consulted on L.N. 193.

21. L.N. 193 comes into operation on 1 March 2020.

Concluding observations

22. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

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⁴ The newly added bachelors degrees are in arts and sciences, and early childhood education and special education.

⁵ The newly added masters degrees are in architecture (design), Buddhist counselling, and oral and maxillofacial radiology and diagnostic imaging.