

立法會
Legislative Council

LC Paper No. LS40/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 January 2020**

Tabling in LegCo : Council meeting of 19 February 2020

Amendment to be made by : Council meeting of 18 March 2020 (or that of 22 April 2020 if extended by resolution)

Specification of Public Offices (Amendment) Notice 2020 (L.N. 9)

L.N. 9 is made by the Chief Executive in Council under section 43 of the Interpretation and General Clauses Ordinance (Cap. 1) to add to the Schedule to the Specification of Public Offices Notice (Cap. 1C) new provisions relating to the Director of Marine ("DM") so that DM may delegate any power or duty provided under any of these new provisions in accordance with section 43 of Cap. 1. These powers and duties mainly relate to the approval of exemption applications in respect of certain ships to which the following Ordinances or subsidiary legislation are applicable:

- (a) Merchant Shipping (Safety) Ordinance (Cap. 369) and some of its subsidiary legislation (including the Merchant Shipping (Safety) (Carriage of Cargoes and Oil Fuel) Regulation (Cap. 369AV));
- (b) certain subsidiary legislation under the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) (including the Merchant Shipping (Control of Ballast Water and Sediments) Regulation (Cap. 413Q)) and the Merchant Shipping (Seafarers) Ordinance (Cap. 478); and
- (c) Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582).

2. According to paragraphs 4 to 6 of the Legislative Council ("LegCo") Brief (File Ref: THB(T) PML CR8/10/100/6) issued by the Transport and Housing Bureau and the Marine Department ("MD") in January 2020, L.N. 9 is made to enhance the efficiency in handling the exemption applications under the provisions referred to in the preceding paragraph in view

of the growth in the number and tonnage of Hong Kong registered ships, and the number of exemption applications requiring DM's personal approval, in recent years. Members may refer to the LegCo Brief for further details.

3. According to paragraph 10 of the LegCo Brief, the Administration has consulted the Hong Kong Fleet Operation Advisory Committee of MD, which supports the legislative proposal. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 27 May 2019 on the enhancement of services of the Hong Kong Shipping Registry which included delegation of DM's power in issuing exemptions to Hong Kong registered ships. Members were generally supportive of the enhancement measures and urged for their early implementation.

4. According to paragraph 1 of the LegCo Brief, L.N. 9 is made to delegate the power currently vested with DM in issuing exemptions to Hong Kong registered ships. However, it is noted that the exemption powers delegated under L.N. 9 also concern ships that are not Hong Kong registered ships (such as non-Hong Kong ships while within the waters of Hong Kong, see, for example, the powers provided under section 2 of Cap. 369AV and sections 3 and 40 of Cap. 413Q respectively). It is also noted that Cap. 413Q, which was published in the Gazette as L.N. 91 of 2018¹ on 18 May 2018 to implement the requirements of the International Convention for the Control and Management of Ships' Ballast Water and Sediments ("BWM Convention"), has yet to come into operation. Upon enquiry by the Legal Service Division, the Administration has clarified as follows:

- (a) although an exemption for a non-Hong Kong ship while in Hong Kong is normally issued by the ship's own flag administration, it is possible that DM may be asked to issue exemption to such a ship under certain unforeseen circumstances, in which case DM will decide whether or not to delegate the power to issue exemption for the non-Hong Kong ship in question, having regard to all relevant considerations (such as the complexity involved in the proposed exemption item and the implication of the exemption); and

¹ L.N. 91 of 2018 is a new regulation made to implement the requirements of the BWM Convention, including the regulation of ballast water and sediments and the standards required to be met when ships conduct ballast water management, ballast water exchange and sediments management. No subcommittee was formed to study L.N. 91 of 2018. It will come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette. Please see paragraphs 9 to 11 of LC Paper No. LS61/17-18 for details.

- (b) the BWM Convention which Cap. 413Q is made to implement has yet to be extended and made applicable to Hong Kong by the Central People's Government and the commencement date of Cap. 413Q will be appointed upon the completion of the relevant procedures.

5. L.N. 9 (except section 3(3)) comes into operation on 6 April 2020. Section 3(3) of L.N. 9, which concerns DM's power to grant exemption under Cap. 413Q, comes into operation on the day on which Cap. 413Q comes into operation.

6. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 9.

Prepared by

LEE Hoi-see, Evelyn
Assistant Legal Adviser
Legislative Council Secretariat
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