

立法會
Legislative Council

LC Paper No. LS30/20-21

**Paper for the House Committee Meeting
on 29 January 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 22 January 2021**

Tabling in LegCo : Council meeting of 27 January 2021

Amendment to be made by : Council meeting of 24 February 2021 (or that of 17 March 2021 if extended by resolution)

Foreign Lawyers Registration (Fees) (Amendment) Rules 2021 (L.N. 6)

L.N. 6 is made by the Council of The Law Society of Hong Kong ("Law Society") under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. L.N. 6 amends the Schedule to the Foreign Lawyers Registration (Fees) Rules (Cap. 159U) mainly to revise the fees payable to the Law Society under Part IIIA of Cap. 159 in connection with (a) the first registration as a foreign lawyer or foreign firm; and (b) the renewal of a certificate of registration as a foreign lawyer or foreign firm.

2. The revision of the fees payable is summarized as follows:

- (a) the fees for the first registration as a foreign lawyer that is valid from a date that falls within one of the three periods from 1 July 2021 to 30 June 2022 (i.e. from 1 July 2021 to 31 March 2022, from 1 April 2022 to 14 May 2022, and from 15 May 2022 to 30 June 2022) will be reduced by 17% to 50% (i.e. from \$9,000 to \$4,500, from \$4,500 to \$2,250, and from \$13,500 to \$11,250 respectively);
- (b) the fees for the first registration as a foreign firm that is valid from a date that falls within one of the three periods mentioned in (a) above will be reduced by 30% to 50% (i.e. from \$35,000 to \$17,500, from \$17,500 to \$8,750, and from \$29,500 to \$20,750 for the respective periods);
- (c) the fees for the renewal of a certificate of registration as a foreign lawyer and foreign firm will be reduced by 50% from \$9,000 to \$4,500 and from \$12,000 to \$6,000 respectively; and

(d) the reduced fees payable mentioned in (a), (b) and (c) above will be reverted to the level before the revision with effect from 1 July 2022.

3. L.N. 6 also repeals a fee item for the first registration of an existing firm as a foreign firm and introduces a three-tier fee mechanism for the first registration as a foreign firm (i.e. from 1 July 2021 to 31 March 2022: \$17,500, from 1 April 2022 to 14 May 2022: \$8,750, and from 15 May 2022 to 30 June 2022: \$20,750) to align with the fee mechanism for the first registration as a foreign lawyer (i.e. from 1 July 2021 to 31 March 2022: \$4,500, from 1 April 2022 to 14 May 2022: \$2,250, and from 15 May 2022 to 30 June 2022: \$11,250).

4. According to paragraph C of the Legislative Council ("LegCo") Brief issued by the Law Society on 22 January 2021, the reduction of the fees payable is to alleviate cash flow problem of foreign firms and lawyers in view of the present economic downturn. However, to sustain the operation of the Law Society, the Law Society can only afford the reduction for one year. According to paragraph E of the LegCo Brief, the Law Society's proposals have been considered and approved by the Council of the Law Society comprising a wide cross section of the solicitors' profession.

5. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 6.

6. Save for the amendment referred to in paragraph 2(d) above which comes into operation on 1 July 2022, L.N. 6 comes into operation on 1 April 2021.

Insurance (Amendment) Ordinance 2020 (Commencement)

Notice (L.N. 7)

Insurance (Special Purpose Business) Rules (L.N. 8)

7. The Insurance (Amendment) Ordinance 2020 (Ord. No. 17 of 2020) ("Amendment Ordinance") was published in the Gazette on 24 July 2020 after the Insurance (Amendment) Bill 2020¹ was passed by LegCo on 17 July 2020. The Amendment Ordinance amends the Insurance Ordinance (Cap. 41) to provide for a new regulatory regime for insurance-linked securities ("ILS") business in Hong Kong. Under the new section 8A of Cap. 41 (added by section 8 of the Amendment Ordinance), the Insurance Authority ("IA") is empowered to authorize a company to carry on special purpose business ("SPB") (i.e. the insurance business of effecting and carrying out contracts of insurance that are fully funded through the issuance of ILS) if certain requirements are met. L.N. 7 and L.N. 8 are made to implement this new ILS regulatory regime under the Amendment Ordinance.

¹ No Bills Committee was formed to scrutinize the Insurance (Amendment) Bill 2020.

L.N. 7

8. L.N. 7 is made by the Secretary for Financial Services and the Treasury under section 1(2) of the Amendment Ordinance to appoint 29 March 2021 as the day on which the Amendment Ordinance comes into operation.

L.N. 8

9. L.N. 8 is made by IA under the new section 129A of Cap. 41² to provide for certain restrictions on the sale of ILS. These restrictions are summarized below:

- (a) the sale of ILS is restricted to eligible ILS investors which include:
 - (i) recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies as defined under the Securities and Future Ordinance (Cap. 571);
 - (ii) licensed corporations or registered institutions as defined under Cap. 571, or other corporations carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;
 - (iii) banks or authorized financial institutions as defined under the Banking Ordinance (Cap. 155);
 - (iv) insurers authorized under Cap. 41;
 - (v) governments (other than a municipal government authority), central banks, or any multilateral agencies; and
 - (vi) collective investment schemes (excluding collective investment schemes authorized under section 104 of Cap. 571, registered schemes or its constituent fund as defined under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), approved pooled investment funds as defined under the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A), and registered schemes as defined under the Occupational Retirement Schemes Ordinance (Cap. 426)); and

² Under the new section 129A of Cap. 41 (added by section 20 of the Amendment Ordinance), IA is empowered to make rules to (i) prohibit any sale of, or the making of any offer to sell, ILS to any person other than an investor falling within a type prescribed in the rules; (ii) prohibit any sale of, or the making of any offer to sell, ILS at any amount lower than that prescribed in the rules; and (iii) prescribe offences for contravention of the rules, punishable by a fine or imprisonment or both.

- (b) the consideration for each transaction in which ILS are sold or offered to be sold must not be less than US\$250,000 or the equivalent of such amount in other currencies.

10. A person who contravenes the restrictions on the sale of ILS mentioned above commits an offence and is liable (i) on summary conviction to fine at level 6 (\$100,000) and, in the case of an individual, also to an imprisonment for six months; or (ii) on conviction on indictment to a fine of \$200,000 and, in the case of an individual, also to an imprisonment for two years.

11. According to paragraph 22 of the LegCo Brief (File ref: INS/2/3/2C) issued by the Financial Services and the Treasury Bureau and IA on 15 January 2021, IA has conducted a six-week public consultation on the proposed rules for SPB ("SPB Rules"). The respondents generally find the proposals acceptable but there are calls for a lower minimum investment size to facilitate the development of the ILS market and make Hong Kong a competitive ILS domicile. The SPB Rules have been refined to take into account of feedback received during the public consultation and the consultation with LegCo.

12. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on 2 November 2020 on the proposed SPB Rules. Panel members did not raise objection to the introduction of the subsidiary legislation. Some members urged the Administration and IA to consider lowering the proposed minimum investment size (i.e. US\$1 million or equivalent) for each ILS transaction.

13. L.N. 8 comes into operation on the day on which section 8 of the Amendment Ordinance (which added the new section 8A of Cap. 41) comes into operation, i.e. 29 March 2021 (the same day on which the Amendment Ordinance comes into operation by virtue of L.N. 7 reported in paragraph 8 above).

Concluding observations

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

Prepared by

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