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**Paper for the House Committee Meeting
on 26 February 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 19 February 2021**

Tabling in LegCo : Council meeting of 24 February 2021

Amendment to be made by : Council meeting of 24 March 2021 (or that of 21 April 2021 if extended by resolution)

Dangerous Goods (Control) Regulation (L.N. 20)

Dangerous Goods (Application and Exemption) Regulation 2012 (Amendment) Regulation 2021 (L.N. 21)

The Dangerous Goods Ordinance (Cap. 295) and its subsidiary legislation provide for the control on the manufacture, storage, conveyance and use of dangerous goods ("DG"). In order to update the regulatory system of DG so as to align it with international standards, amendments have been made to Cap. 295 and its subsidiary legislation by phases since 2002. To this end, the Dangerous Goods (Amendment) Ordinance 2002 (Ord. No. 4 of 2002) ("DGAO")¹ and certain subsidiary legislation including the Dangerous Goods (Application and Exemption) Regulation 2012 (Cap. 295E) were made. DGAO and Cap. 295E have yet to come into operation. L.N. 20 and L.N. 21 are made by the Chief Executive in Council under section 5 of Cap. 295 to replace the existing Dangerous Goods (General) Regulation (Cap. 295B) with a new regulation and to make amendments to Cap. 295E respectively.

L.N. 20

2. Cap. 295B sets out the licensing regime for the manufacture, storage, conveyance and use of DG as well as requirements for the packaging, marking and labelling ("PML") of DG. L.N. 20 replaces Cap. 295B mainly to align the existing regulatory framework of DG with the amendments to the International Maritime Dangerous Goods ("IMDG") Code. It comprises eight Parts and eight Schedules. The major provisions of L.N. 20 are summarized below:

¹ DGAO was published in the Gazette on 22 March 2002 after the Dangerous Goods (Amendment) Bill 2000 was passed by the Legislative Council on 13 March 2002.

- (a) Parts 2 and 3 make provisions for the manufacture, storage, use, conveyance as well as PML requirements of DG specified in Schedule 1² and Schedule 2³ to Cap. 295E respectively and empower certain officials including the Commissioner of Mines and the Director of Fire Services ("DFS") to grant and renew the relevant licences;
- (b) Parts 4 and 5 provide for the requirements in relation to the mixed storage of air cargo DG and other DG specified in Schedule 2 to Cap. 295E at the Hong Kong International Airport and the storage of Class 9A DG (i.e. combustible goods) respectively;
- (c) Part 6 provides for the exemption from the licensing requirement for storage of freight containers in approved container terminals if certain conditions are satisfied;
- (d) Part 7 contains miscellaneous provisions which include empowering DFS to grant an exemption from certain provisions of L.N. 20 and providing for the validity period and prescribed fees for the grant or renewal of licences or permits under L.N. 20;
- (e) Part 8 repeals Cap. 295B and provides for a transitional period of 24 months for certain requirements under the new regulatory regime; and
- (f) Schedules 1 to 8 set out such matters including PML requirements for DG and the prescribed fees for granting and renewing licences and permits.

3. Major changes made in L.N. 20 when compared with Cap. 295B include:

- (a) converting the existing local classification of DG from 10 categories under Cap. 295B to nine classes (which adopts the classification system of DG under Cap. 295E) to align with the IMDG Code classification system;
- (b) replacing the existing PML requirements of DG with new PML

² DG specified in Schedule 1 to Cap. 295E includes Class 1 DG (explosives), Group 8 explosives (blasting articles) or special Class 9 DG (e.g. life-saving appliances (self-inflating) or safety devices which are electrically initiated).

³ DG specified in Parts 2, 3 and 4 in Schedule 2 to Cap. 295E includes Class 2 (e.g. compressed gases), Class 3 (flammable liquids having a flash point of 60°C or lower), Class 3A (flammable liquids having a flash point exceeding 60°C), Class 4 (flammable solids), Class 5 (oxidizing substances and organic peroxides), Class 6.1 (toxic substances), Class 8 (corrosive substances) and Class 9 (miscellaneous dangerous substances and materials).

requirements to align with the IMDG Code and providing for the issue of the codes of practices by DFS to cover technical details (e.g. safety requirements on mixed storage of DG);

- (c) stepping up the control on conveyance of DG by requiring the display of vehicle identification discs, licensed vehicles to undergo examination for compliance of fire safety requirements and updating the level of the maximum penalty for offences under Cap. 295B;⁴ and
- (d) removing or updating obsolete requirements in Cap. 295B e.g. updating the provisions on the use of detonating fuses.

L.N. 21

4. Cap. 295E provides for the application of Cap. 295 to DG specified in its Schedules and exempts, under specified circumstances, certain DG from the requirement of a licence for the storage, conveyance and use of DG. L.N. 21 amends Cap. 295E mainly to:

- (a) update the lists of DGs specified in Schedules 1, 2, 3 and 5 and prohibited goods in Schedule 4 and introduce the concept of "limited quantity" by making reference to the IMDG Code and exempt DG in small packaging from certain marking and labelling requirements;
- (b) enhance the safety of the manufacture, storage, conveyance and use of DG through a risk-based approach (i.e. by introducing the concept of "packing group" and "subsidiary hazard" as two additional elements for the identification of a type of DG specified in Schedule 2 to Cap. 295E), and to revise the exempt quantity of DG by making reference to the respective degree of hazard identified by the packing group; and
- (c) introduce certain exemptions, including exemption of certain DG from the regulatory control under Cap. 295 when they are contained in medicines, food, plants or animals, inflated tyres, inflated balls or balloons etc.

Public Consultation

5. According to paragraph 9 of the Legislative Council ("LegCo") Brief (File Ref: SBCR 1/1336/86) issued by the Security Bureau in February 2021, the

⁴ The fine for offences under the existing Cap. 295B at the rate of \$1,000, \$2,000, \$5,000, \$10,000 and \$25,000 has been adjusted to \$5,000, \$10,000, \$25,000, \$50,000 and \$100,000 respectively.

Administration has conducted public consultation and consulted the relevant trades (including the Dangerous Goods Standing Committee, the Consultative Group on Blasting Regulation, explosive suppliers and explosive store owners) on the proposed amendments in 2017 and 2019. The Administration has continuously engaged relevant stakeholders during the drafting process of the subsidiary legislation from 2018 to present by conducting additional briefing sessions and circulating information paper. The trades and the public are generally supportive of the proposals.

Consultation with LegCo Panel

6. As advised by the Clerk to the Security Panel, the Panel was consulted on 3 November 2020 on the legislative proposals. Members were generally supportive of the proposals, though some members raised concerns and enquiries about the types and quantities of DG to be covered, impacts on the operation of the relevant trades and the daily use of DG by the public, and the implementation details.

Commencement

7. L.N. 20 and L.N. 21 come into operation on a day falling on or after the commencement date of section 4 of DGAO⁵ to be appointed by the Secretary for Security by notice published in the Gazette.

Protection of Endangered Species of Animals and Plants Ordinance (Amendment of Schedules 1 and 3) Order 2021

(L.N. 22)

8. L.N. 22 is made by the Secretary for the Environment under section 48 of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) mainly to give effect to amendments made at the 18th meeting of the Conference of the Parties (CoP 18) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") in 2019 and to the changes made to the list of endangered species in Appendix III to CITES since the last amendments to Cap. 586 in 2018. Schedule 1 to Cap. 586 sets out the species listed in Appendices I to III⁶ to CITES, which are subject to control under Cap. 586. Schedule 3 to Cap. 586 sets out CITES instruments as

⁵ Section 4 of DGAO amends section 5 of Cap. 295 to provide for the implementation of the IMDG Code, other publications issued by the International Maritime Organization and other international agreements, to empower the Director of Marine to grant exemptions in respect of shipping and to set a maximum fine at level 6 (i.e. \$100,000).

⁶ Appendix I: Species which are highly endangered and threatened with extinction.

Appendix II: Species which, unless trade is controlled, could become threatened with extinction.

Appendix III: Species identified by any parties to CITES as requiring assistance from other CITES parties in controlling the international trade.

amended from time to time and as applied to Hong Kong.

9. The amendments introduced by L.N. 22 are summarized below:
- (a) Schedule 1 to Cap. 586 is amended to make changes to the listings of the endangered species. These changes include addition of new species or group of species, transfer of species or group of species among the Appendices, and deletion of certain species or group of species from the Appendices. L.N. 22 also makes certain technical amendments relating to nomenclature and provision of common names to species names; and
 - (b) Schedule 3 is amended by, among others, providing an interpretation for the term "assisted production" in Part 1; revising the conditions for the acceptance and clearance of certain documents relating to the trade in certain types of biological sample in Part 2; and revising requirements relating to exemption for scientific study, forensic analysis or diagnostic purpose in relation to museum and herbarium specimens in Part 3.

10. Members may refer to Annexes B and C to the LegCo Brief (File Ref: EP 86/25/01 (19)) issued by the Environment Bureau and the Agriculture, Fisheries and Conservation Department in February 2021 for details of the changes to Schedule 1 to Cap. 586.

11. According to paragraph 10 of the LegCo Brief, the Administration consulted the Endangered Species Advisory Committee on the proposed amendments in November 2019 and its members supported the proposal. Relevant traders were consulted on the possible listing of the species in CITES Appendices in May 2019 before CoP 18 and they did not raise any objection.

12. As advised by the Clerk to the Panel on Environmental Affairs, an information paper about the proposed amendments to the Schedules to Cap. 586 to reflect the latest decisions of CITES provided by the Administration was circulated to members of the Panel on 20 January 2021. No member has raised enquiries on the paper.

13. L.N. 22 comes into operation on 30 April 2021.

**Toys and Children's Products Safety Ordinance
(Amendment of Schedules 1 and 2) Notice 2021**

(L.N. 23)

14. L.N. 23 is made by the Secretary for Commerce and Economic Development under section 37 of the Toys and Children's Products Safety Ordinance (Cap. 424) to update certain safety standards for toys and three classes

of children's products⁷ as specified in Schedules 1 and 2 to Cap. 424 respectively.

15. Under sections 3 and 5 of Cap. 424, no person shall manufacture, import or supply any toy or children's product unless the toy or product complies with all the applicable requirements in at least one relevant safety standard specified in Schedule 1 or Schedule 2 to Cap. 424 respectively. Such requirements do not apply to goods in transit, goods in the course of transshipment or goods manufactured for export under sections 3(1) and 5(3) of Cap. 424.

16. According to paragraph 4 of the LegCo Brief (File Ref: CITB CR 08/18/3) issued by the Commerce, Industry and Tourism Branch, Commerce and Economic Development Bureau in February 2021, the revisions introduced in L.N. 23 are to apply the standards updated by the standards institutions since the last amendment to the two Schedules in 2020. According to paragraph 8 of the LegCo Brief, the Administration consulted some 50 major trade associations and organizations advocating children welfare in December 2020 and posted a gist of the proposed updates on the relevant Government websites for public information and comments. The Administration has received four submissions, which did not raise any objection in principle to the proposal.

17. As advised by the Clerk to the Panel on Economic Development, the Panel has not been consulted on L.N. 23.

18. L.N. 23 comes into operation on 1 October 2021.

Concluding observations

19. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 20 and L.N. 21 and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 22 and L.N. 23.

Prepared by

CHENG Kiu-fung, Vanessa
Assistant Legal Adviser
Legislative Council Secretariat
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⁷ The three classes of children's products are "bunk beds for domestic use", "children's high chairs and multi-purpose high chairs for domestic use" and "children's paints".