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LC Paper No. LS78/20-21

**Paper for the House Committee Meeting
on 11 June 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 4 June 2021**

Tabling in LegCo : Council meeting of 9 June 2021

Amendment to be made by : Council meeting of 7 July 2021 (or that of 18 August 2021 if extended by resolution)

**Fire Service (Installations and Equipment) (Amendment)
Regulation 2021** **(L.N. 73)**

Currently, a stand-alone fire detector ("SFD") falls within the definition of fire service installation or equipment under section 2 of the Fire Services Ordinance (Cap. 95)¹. Therefore, under regulations 6(1) and 7(1) of the Fire Service (Installations and Equipment) Regulations (Cap. 95B), no SFD shall be installed, maintained, inspected or repaired by any person other than a fire service installation contractor registered under the Fire Service (Installation Contractors) Regulations (Cap. 95A) ("RFSIC"). Under regulation 8 of Cap. 95B, the owner of an SFD which is installed in any premises has the duty to keep the detector in efficient working order at all times and to have it inspected by an RFSIC at least once in every 12 months.

2. L.N. 73 is made by the Chief Executive ("CE") in Council under section 25 of Cap. 95 to amend Cap. 95B by:

- (a) adding a new definition of "stand-alone fire detector"² to regulation 2;
- (b) excluding any SFD that is not required by or pursuant to law to be installed in any premises from the application of regulations 6(1) and 7(1); and
- (c) excluding such SFD from the application of regulation 8.

¹ Under section 2 of Cap. 95, "fire service installation or equipment" means any installation or equipment manufactured, used or designed to be used for the purposes of, among others, giving warning of a fire.

² Under L.N. 73, "stand-alone fire detector" is defined to mean a self-contained battery-operated installation that is manufactured, used or designed to be used for the purpose (whether or not the sole purpose) of detecting, and giving warning (by an audible alarm or otherwise) of, fire.

3. The effect of L.N. 73 is that RFSICs will not need to be engaged for the installation, maintenance, inspection or repair of an SFD that is not required by or pursuant to law to be installed in any premises. Further, the owner of such SFD does not have the duty to keep it in efficient working order at all times or have it inspected by an RFSIC at least once in every 12 months.

4. According to paragraph 17 of the Legislative Council ("LegCo") Brief (File Ref.: SBCR 64/581/76) issued by the Security Bureau ("SB") in June 2021, the Administration consulted the Registered Fire Service Installation Contractors of Hong Kong Association ("FSICA") in October 2018 and December 2020. FSICA is in support of the legislative proposal. The Administration also conducted 10 briefing sessions on the legislative proposal from December 2020 to March 2021 and uploaded an information note regarding the proposal onto the Fire Services Department's website in March 2021 for public information.

5. As advised by the Clerk to the Panel on Security, the Panel was briefed on the legislative proposal at its meeting on 9 April 2021. Members were supportive of the proposal but enquired about various issues, including the quality, installation and maintenance of SFDs.

6. L.N. 73 comes into operation on 1 September 2021.

**Firearms and Ammunition (Declaration of Arms)
(Amendment) Regulation 2021**

(L.N. 74)

7. Under sections 13 and 14 of the Firearms and Ammunition Ordinance (Cap. 238), possession of or dealing in arms or ammunition without a licence is an offence. Under section 2(1) of Cap. 238, "arms" means, among others, any firearm, gun or any other thing declared by CE in Council in regulations made under section 52 to be within the definition of arms for the purpose of Cap. 238.

8. L.N. 74 is made by CE in Council under section 52 of Cap. 238 to amend the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238D) by:

- (a) declaring to be "arms" an item that is capable of being used as a firearm component part or would have been capable of being used as such had it not been (i) defective; (ii) out of repair; or (iii) modified and adapted; and
- (b) defining "firearm component part" to mean (i) a barrel, chamber or cylinder; (ii) a frame, body or receiver; or (iii) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber.

9. L.N. 74 comes into operation on 1 November 2021. According to paragraph 14 of the LegCo Brief (File Ref.: SBCR 14/3231/55) issued by SB on 2 June 2021, this would allow a grace period for those being affected (e.g. some

existing licensees or those who are currently in possession of firearm component parts to be regulated) to dispose of the component parts concerned or to apply for a licence from the Police.

10. According to paragraph 18 of the LegCo Brief, the Administration conducted a four-week public consultation on the legislative proposal from 17 February 2021 to 16 March 2021. The majority of the respondents who gave their views using the response form provided supported a clearer statutory definition of firearm component part, and the provision of a 90-day grace period before the legislative proposal takes effect.

11. As advised by the Clerk to the Panel on Security, the Panel was briefed on the legislative proposal at its meeting on 2 March 2021. While members were supportive of the proposal, some members expressed concern on various issues, including the types of firearm component part to be regulated, the penalty and defence of the relevant offence(s), and the provision of a grace period.

Telecommunications (Registration of SIM Cards) Regulation

(L.N. 75)

12. L.N. 75 is a new regulation made by CE in Council under section 37 of the Telecommunications Ordinance (Cap. 106) to introduce the Real-name Registration Programme for subscriber identification module ("SIM") cards ("RRP").

13. L.N. 75 comprises six Parts and a Schedule. The key provisions of L.N. 75 are summarized below:

- (a) Part 2 provides for the registration of a service plan SIM card and a pre-paid SIM card for any eligible person³ and the maximum number of pre-paid SIM cards that may be currently registered with a specified licensee⁴ for an eligible person;
- (b) Part 3 provides for the circumstances in which a specified licensee may or must deregister a SIM card that is currently registered with the licensee, including where the licensee has ceased to supply any

³ Section 4 of L.N. 75 provides that for the purposes of L.N. 75, "an eligible person" means an individual acting in his or her individual capacity; an individual or a body acting in the capacity as the holder of a valid branch or business registration certificate under the Business Registration Ordinance (Cap. 310); or a body that does not hold such certificate.

⁴ "Specified licensee" is defined under section 2(1) of L.N. 75 to mean (i) the holder of a unified carrier licence, or mobile carrier licence, as defined by section 2(1) of the Telecommunications (Carrier Licences) Regulation (Cap. 106V); (ii) the holder of a services-based operator licence issued under section 7(5) of Cap. 106; or (iii) a person given the right under a class licence created under section 7B(2) of Cap. 106 to offer in the course of business a telecommunications service.

service through the SIM card, has reasonable cause to believe that there is irregularity concerning the registration of the SIM card, and has received a request for deregistration from an eligible person for whom a SIM card is currently registered with the licensee;

- (c) Part 4 provides for the requirements in relation to record keeping, including, among others, that a specified licensee must (i) keep a record of certain specified information in respect of its SIM card and the relevant eligible person for one year after the SIM card is deregistered; and (ii) provide the record to a law enforcement officer in certain circumstances⁵ with or without a warrant issued by a magistrate;
- (d) Part 5, among others, empowers the Communications Authority ("CA") to issue guidelines and to enter and inspect any places in Hong Kong used by the specified licensees for the purpose of compliance with L.N. 75 to verify that the licensees are complying with L.N. 75;
- (e) Part 6 provides for transitional arrangements as follows:
 - (i) for an existing pre-paid SIM card, the requirement under section 5 of L.N. 75 (i.e. that a specified licensee must ensure that the SIM card is not active unless the SIM card is currently registered with the licensee) does not apply until after 23 February 2023; and
 - (ii) for an existing service plan SIM card, the requirement under section 5 of L.N. 75 does not apply so long as the specified licensee continues to supply a service through the SIM card to the existing user; and
- (f) The Schedule provides for the specified information of eligible persons to be kept by a specified licensee under Part 4.

14. According to paragraph 12 of the LegCo Brief (File Ref.: CCIB/SD 605-15/1) issued by the Commerce and Economic Development Bureau ("CEDB") and SB on 1 June 2021, CA will issue guidelines to supplement/elaborate on L.N. 75 regarding the detailed operational requirements of RRP. The guidelines will take effect when RRP starts on 1 September 2021.

15. According to paragraph 15 of the LegCo Brief, the Administration conducted a seven-week public consultation from 30 January to 20 March 2021,

⁵ For example, where it is necessary to obtain a SIM card record for the purpose of investigating or preventing an offence, or preventing the loss of life of, or serious bodily harm to, any person.

and various stakeholders have expressed strong support for RRP with necessary refinements. The suggestions and views of the Privacy Commissioner for Personal Data have been taken into account in formulating RRP.

16. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Panel was consulted on RRP at its meeting on 15 March 2021. Members had no objection to the Administration's proposal to implement RRP, but expressed concerns on various issues including whether the proposed cap of three pre-paid SIM cards per user could be relaxed for corporate users.

17. L.N. 75 comes into operation on 1 September 2021 save and except that Part 2 (Registration), Part 3 (Deregistration), Part 4 (Record Keeping), section 15 (Inspection by CA), Part 6 (Transitional Arrangements) and the Schedule (specified information of eligible persons) come into operation on 1 March 2022.

**Court Proceedings (Electronic Technology)
(Specification of e-Courts) Rules** (L.N. 76)

**Court Proceedings (Electronic Technology)
(Magistrates' Court) Rules** (L.N. 77)

**Court Proceedings (Electronic Technology)
(District Court Civil Proceedings) Rules** (L.N. 78)

**Court Proceedings (Electronic Technology)
(District Court Criminal Proceedings) Rules** (L.N. 79)

**Court Proceedings (Electronic Technology)
(District Court) (Electronic Fees) Rules** (L.N. 80)

**Court Proceedings (Electronic Technology)
(Magistrates' Court) (Electronic Fees) Rules** (L.N. 81)

**Court Proceedings (Electronic Technology)
Ordinance (Commencement) Notice** (L.N. 82)

**District Court Civil Procedure (Fees) (Amendment)
Rules 2021** (L.N. 83)

**Rules of the District Court (Amendment) Rules
2021** (L.N. 84)

18. The Court Proceedings (Electronic Technology) Ordinance (Cap. 638), passed by LegCo on 17 July 2020, provides a legal framework to

enable court-related documents to be handled in electronic form. Cap. 638 also empowers the Chief Justice ("CJ") to make rules to specify the courts and tribunals by or in relation to which electronic technology ("e-technology") may be used ("e-Courts"), designate an information system ("e-system") in relation to court proceedings or other court-related purposes, regulate or prescribe the practice and procedure relating to the use of e-technology in courts ("e-Rules"), and provides for fees payable for the use of electronic mode in court-related matters. Cap. 638 has not been brought into operation pending the making of the relevant e-Rules.

19. L.N. 76 to L.N. 82, which are made under Cap. 638, relate to the use of e-technology in court proceedings. The provisions of L.N. 76 to L.N. 82 are summarized below.

L.N. 82

20. L.N. 82 is made by CJ under section 1(2) of Cap. 638 to appoint 1 October 2021 as the day on which Cap. 638 comes into operation. Before the enactment of Cap. 638, no Bills Committee was formed to study the Court Proceedings (Electronic Technology) Bill ("Bill").

L.N. 76

21. L.N. 76 is made by CJ under section 6 of Cap. 638 to specify the District Court and the Magistrates' Court as e-Courts to the effect that e-technology may be used (including use of court-related documents in electronic form) in relation to the proceedings of the e-Courts under Part 5 (Use of Electronic Technology in Courts) of Cap. 638.

L.N. 77 to L.N. 79

22. L.N. 77 to L.N. 79 are e-Rules made by CJ pursuant to section 26 of Cap. 638 mainly to prescribe the practice and procedure for using e-technology in e-Courts in relation to the following matters:

- (a) application of the e-Rules to certain proceedings which include proceedings initiated by summons and fixed penalty proceedings in the Magistrates' Courts, certain District Court civil proceedings⁶ and the District Court criminal proceedings⁷;

⁶ These proceedings are those to which any of the following rules apply: the Employees' Compensation (Rules of Court) Rules (Cap. 282B), the District Court Equal Opportunities Rules (Cap. 336G), the Rules of the District Court (Cap. 336H) or a proceeding under Part III of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

⁷ These proceedings are those in relation to a charge or complaint that is transferred to the District Court under section 88 of the Magistrates Ordinance (Cap. 227), an indictment (the proceedings on which are transferred to the District Court under section 65F of the Criminal Procedure Ordinance (Cap. 221)), or a proceeding for taxation of costs or review of taxation of costs of a criminal proceeding in the District Court or the Magistrates' Court.

- (b) documents that are sent to the e-Courts in electronic form by means of the e-system and rules for computation of time at which the documents concerned are taken to have been received by the e-Courts;
- (c) conversion of documents by the e-Courts from paper form to electronic form for a specified purpose, or vice versa;
- (d) electronic service of documents between parties to a proceeding;
- (e) electronic authentication of documents sent by or to the e-Courts by means of the e-system, or served on or by parties to a proceeding in electronic form; and
- (f) payment of fees and fines etc. by means of the e-system.

23. In relation to the District Court civil proceedings to which L.N. 78 applies, L.N. 78 further provides for the following matters:

- (a) the non-compliance with a requirement of any rules in L.N. 78 is to be treated as an irregularity and such irregularity does not nullify the proceeding concerned, a step taken or a document, judgment or order in that proceeding; and
- (b) the transfer of proceedings from the District Court to a court that is not an e-Court.

L.N. 80 and L.N. 81

24. L.N. 80 and L.N. 81 are made by CJ under section 29 of Cap. 638 mainly to provide for:

- (a) the fees payable in respect of court-related matters carried out by means of an e-system ("e-fees") in relation to civil and criminal proceedings of the District Court, proceedings under Part III of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), Labour Tribunal proceedings, proceedings under the Estate Agents (Registration of Determination and Appeal) Regulation (Cap. 511E) and proceedings in the Magistrates' Courts; and
- (b) a concession of 20% for certain e-fees for a period of five years and the calculation of such concessionary e-fees.

L.N. 83 and L.N. 84

25. L.N. 83 and L.N. 84 are made by the District Court Rules Committee under the District Court Ordinance (Cap. 336).

L.N. 83

26. The District Court Civil Procedure (Fees) Rules (Cap. 336C) specify the fees payable in relation to the District Court civil proceedings. L.N. 83 is made under sections 72 and 87 of Cap. 336 to amend Cap. 336C mainly to:

- (a) expand the scope of Cap. 336C to cover criminal proceedings in the District Court; and
- (b) specify the fees payable in respect of criminal proceedings in the District Court in the newly added Part 2 of the Schedule to Cap. 336C.

27. According to paragraph 17 of the LegCo Brief (File Ref: AW-275-005-010-009) issued by the Administration Wing of the Chief Secretary for Administration's Office on 2 June 2021, fees related to the District Court criminal proceedings are currently charged on an administrative basis. For clarity, L.N. 83 is made so that fee items relating to criminal proceedings are covered by Cap. 336C.

L.N. 84

28. Currently, Order 65, rule 10 of Rules of the District Court (Cap. 336H) provides that no process shall be served on Sunday except, in case of urgency, with the leave of the court. According to paragraph 20 of the LegCo Brief, the Judiciary considers that such a restriction is no longer needed for the electronic mode.

29. L.N. 84 is made under section 72 of Cap. 336 to amend Cap. 336H to the effect that Order 65, rule 10 of Cap. 336H does not apply to the service of any process on a Sunday if it is served under L.N. 78 (i.e. by electronic means). It also amends the Directions for Acknowledgement of Service and Notes for Guidance attached to Form No. 14 (Acknowledgement of Service of Writ of Summons) ("AS") in Appendix A of Cap. 336H to include the option of using an e-system to submit AS to the District Court under L.N. 78.

Consultation

30. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel was consulted at its meeting on 29 April 2019 on the Judiciary's legislative proposals for implementing the Information Technology Strategy Plan ("ITSP") to enhance the efficiency of court operations. In August 2019, the Judiciary Administration provided an information paper (with the latest draft of the Bill and the key sets of e-Rules) to the Panel after consultation with the stakeholders. No member raised any issue for discussion on the draft Bill and e-Rules. In January 2021, the Judiciary Administration provided another information paper to the Panel on the Judiciary's legislative

proposals in relation to fees payable in respect of court-related matters under ITSP. No member raised any issue on the paper for discussion.

Commencement

31. L.N. 76, L.N. 78, L.N. 80, L.N. 83 and L.N. 84, which relate to the District Court civil proceedings, come into operation on 1 October 2021. L.N. 77, L.N. 79 and L.N. 81, which relate to the District Court criminal proceedings and proceedings in the Magistrates' Courts, come into operation on a day to be appointed by CJ by notice published in the Gazette.

32. According to paragraph 25 of the LegCo Brief, the Judiciary aims to implement an integrated court case management system for the District Court civil cases in batches starting from the fourth quarter of 2021, followed by the Magistrates' Courts and the District Court criminal cases in 2022.

Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 3) Notice 2021

(L.N. 85)

33. L.N. 85 is made by the Secretary for Financial Services and the Treasury ("SFST")⁸ under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289A). It amends the Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289B) to specify that the rate of interest payable on tax reserve certificates issued on or after 7 June 2021 shall be 0.0500% per annum. The rate of interest was last fixed at 0.0833% per annum by L.N. 54 of 2021 which came into operation on 30 April 2021.

34. No LegCo Brief has been issued for L.N. 85. Upon enquiry by the Legal Service Division ("LSD"), the Administration has advised that the adjustment is a mere routine updating in accordance with an established mechanism already made known to the public and therefore no LegCo Brief is provided for this regular updating.

35. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 85.

36. L.N. 85 came into operation on the date of its publication in the Gazette (i.e. 4 June 2021).

⁸ Under rule 7(2)(h) of Cap. 289A, the Financial Secretary may fix the rate of interest in relation to tax reserve certificates issued by the Commissioner of Inland Revenue on or after 11 April 1980. Under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "Financial Secretary" means the Financial Secretary of the Hong Kong Special Administrative Region and SFST.

Concluding observations

37. LSD is scrutinizing the legal and drafting aspects of L.N. 75 and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 73, L.N. 74 and L.N. 76 to L.N. 85.

Prepared by

Rachel DAI (L.N. 73 to L.N. 75 and L.N. 85)
CHUI Ho-yin, Alvin (L.N. 76 to L.N. 84)
Assistant Legal Advisers
Legislative Council Secretariat
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