

**立法會**  
**Legislative Council**

LC Paper No. LS86/20-21

**Paper for the House Committee Meeting  
on 2 July 2021**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 25 June 2021**

**Tabling in LegCo** : Council meeting of 7 July 2021

**Amendment to be made by** : Council meeting of 21 July 2021 (or that of 25 August 2021 if extended by resolution)

**Pharmacy and Poisons (Amendment) Regulation 2021** (L.N. 104)

L.N. 104 is made by the Pharmacy and Poisons Board ("PPB") under section 29(1B) of the Pharmacy and Poisons Ordinance (Cap. 138) with the approval of the Secretary for Food and Health. It amends the Pharmacy and Poisons Regulations (Cap. 138A) by adding the following nine substances to Division A of Schedule 1, Division A of Schedule 3, and Division A of Part 1 of the Poisons List set out in Schedule 10 ("Poisons List") to Cap. 138A:

- (i) Avapritinib; its salts;
- (ii) Fremanezumab;
- (iii) Gilteritinib; its salts;
- (iv) Inclisiran; its salts;
- (v) Lanadelumab;
- (vi) Ozanimod; its salts;
- (vii) Ravulizumab;
- (viii) Tildrakizumab; and
- (ix) Trifarotene; its salts; its esters; their salts.

2. The main effect of L.N. 104 is that the above substances are subject to restrictions with respect to their sale, supply, labelling and storage, and that they can only be sold by retail upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon. Further, the inclusion of the above nine items in the Poisons List means that they can only be sold on registered premises of an authorized seller of poisons by, or in the presence and under the supervision of, a registered pharmacist.

3. According to paragraph 4 of the Legislative Council ("LegCo") Brief (File Ref.: FHB/H/23/7) issued by the Food and Health Bureau in June 2021, PPB

considers the amendments appropriate in view of the potency, toxicity and potential side effects of the above substances. Members may refer to Annex B to the LegCo Brief for details of the above substances which are used to treat various medical conditions including gastrointestinal tumours, migraines, leukaemia, and multiple sclerosis.

4. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 104.

5. L.N. 104 came into operation on the date of publication in the Gazette, i.e. 25 June 2021.

**Designation of Libraries (Amendment) (No. 3) Order 2021 (L.N. 105)**

6. L.N. 105 is made by the Director of Leisure and Cultural Services ("Director") under section 105K of the Public Health and Municipal Services Ordinance (Cap. 132) to amend the Schedule to the Designation of Libraries Order (Cap. 132O) to:

- (a) cancel the designation of Shop Nos. G15 and G16, Ground Floor, Dawning Views Shopping Plaza, 23 Yat Ming Road, Fanling as a library ("old library"); and
- (b) designate Shop Nos. 104A and 105A, First Floor, Dawning Views, 23 Yat Ming Road, Fanling as a library ("new library").

7. The effect of L.N. 105 is that the management and control of the new library is vested in the Director and the old library ceases to be a library for the purposes of Cap. 132.

8. According to paragraphs 3 and 6 of the LegCo Brief (no file reference) issued by the Leisure and Cultural Services Department on 21 June 2021, the old library will be closed and cease operation upon the opening of the new library for public use from 28 December 2021, and the North District Council supported the early commissioning of the new library. Members may refer to the LegCo Brief for further information.

9. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 105.

10. L.N. 105 comes into operation on 28 December 2021.

**Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Sector) Rules (L.N. 106)**

11. The Financial Institutions (Resolution) Ordinance (Cap. 628) establishes a regime for the orderly resolution of financial institutions in Hong Kong that are within the scope of Cap. 628 ("within scope FIs"), and confers various powers on resolution authorities ("RAs") such as the Monetary Authority ("MA"). Under section 90(2) of Cap. 628, RAs are empowered to temporarily suspend, for up to two business days, the termination right<sup>1</sup> of counterparties (except where the counterparty is a financial market infrastructure<sup>2</sup>) to contracts entered into by within scope FIs. The effect is that a counterparty cannot terminate and close out its positions solely as a result of resolution actions being taken by RAs.

12. By L.N. 106, MA makes certain rules ("Rules"), pursuant to section 92 of Cap. 628, to give effect to the suspension of termination rights under section 90(2) of Cap. 628 in cross-border resolution actions. The provisions of L.N. 106 are summarized below:

- (a) a financial contract listed in Part 2 of the Schedule to L.N. 106 (e.g. a contract for the purchase, sale or loan of a transferable security) that is:
  - (i) entered into by an authorized institution ("AI") (i.e. a bank, a restricted licence bank, or a deposit-taking company) incorporated in Hong Kong, a Hong Kong holding company, or a related company of an AI incorporated in Hong Kong ("covered entity");
  - (ii) governed by non-Hong Kong law; and
  - (iii) containing a termination right exercisable by a counterparty is required to contain a provision to the effect that the parties to the contract (other than an excluded counterparty<sup>3</sup>) agree to be bound by any suspension of termination rights in relation to the contract imposed by an RA under section 90(2) of Cap. 628;
- (b) the initial period during which a covered entity is required to comply with the requirement in (a) is 24 months where the counterparty to a financial contract entered into by the covered entity is an AI or a financial institution (other than an AI) that is a "globally systematically important bank" within the meaning provided in Cap. 628, or 30 months for any

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<sup>1</sup> Under the Rules, "termination right" means "a right to terminate the contract; a right to accelerate, close out, set off or net obligations, or any similar right that suspends, modifies or extinguishes an obligation of a party to the contract; or a right to prevent an obligation from arising under the contract".

<sup>2</sup> Under section 2(1) of Cap. 628, "financial market infrastructure" means "a multilateral system among participating financial institutions used for clearing, settling or recording payments, securities, derivatives or other financial transactions and includes any payment system, central securities depository, securities settlement system, central counterparty and trade repository".

<sup>3</sup> Under the Rules, "excluded counterparty" means a financial market infrastructure, MA, the Government of the Hong Kong Special Administrative Region, the government of a non-Hong Kong jurisdiction, or the central bank of a non-Hong Kong jurisdiction.

other contract, and MA is empowered to extend such initial period, or to grant exemption from compliance for a contract; and

- (c) other requirements to be complied with by a covered entity as well as offences for non-compliance are provided, e.g. a covered entity failing without reasonable excuse to propose a rectification plan in compliance with MA's requirement is liable on conviction to a fine at level 2 (i.e. \$5,000).

13. According to paragraphs 4 and 6 of the LegCo Brief (File Ref: B&M/2/1/29/4/4C (2021) Pt. 4) issued in June 2021 by the Financial Services and the Treasury Bureau and MA, the Rules are formulated in accordance with the approach recommended by the Financial Stability Board in its "Principles for Cross-border Effectiveness of Resolution Actions". They have the purpose of ensuring the effectiveness of cross-border resolution actions by giving effect to the suspension of termination rights under section 90(2) of Cap. 628 in relation to contracts governed by the laws of other jurisdictions.

14. According to paragraph 11 of the LegCo Brief, MA conducted a public consultation from January to March 2020 on the legislative proposals. Submissions were received by MA from key stakeholders, who indicated broad support but sought clarifications on technical aspects of the proposals. Further consultation with the industry on the draft text of the Rules was conducted by MA from December 2020 to January 2021. Respondents gave technical comments on the draft text and indicated areas that required further guidance from MA. According to the Administration, MA would provide further implementation details in a Code of Practice to be issued in the future.

15. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed at its meeting held on 1 March 2021 on the legislative proposals. Panel members generally supported the proposals and raised enquiries on a number of issues, including how RAs could effectively suspend termination rights of counterparties to financial contracts entered into by covered entities, consequences for non-compliance, and respondents' comments during consultations on the proposals.

16. L.N. 106 comes into operation on 27 August 2021.

### **Concluding observations**

17. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 104 to L.N. 106.

Prepared by  
Joyce CHAN  
Assistant Legal Adviser  
Legislative Council Secretariat  
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