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**Paper for the House Committee Meeting
on 23 July 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 July 2021**

Tabling in LegCo : Council meeting of 21 July 2021

Amendment to be made by : Council meeting of 18 August 2021 (or that of 8 September 2021 if extended by resolution)

PART I SMALL UNMANNED AIRCRAFT

**Administrative Appeals Board Ordinance
(Amendment of Schedule) Order 2021** (L.N. 115)

Small Unmanned Aircraft Order (L.N. 116)

**Air Transport (Licensing of Air Services)
(Amendment) Regulation 2021** (L.N. 117)

**Air Navigation (Hong Kong) Order 1995
(Amendment) Order 2021** (L.N. 118)

Civil Aviation (Insurance) (Amendment) Order 2021 (L.N. 119)

Background

Under the existing legislative framework in Hong Kong, unmanned aircraft are governed, as far as aviation safety is concerned, by the Air Navigation (Hong Kong) Order 1995 (Cap. 448C). In addition, under section 3 of the Air Transport (Licensing of Air Services) Regulations (Cap. 448A), a person must not use any manned or unmanned aircraft for the carriage in Hong Kong of passengers, mail or cargo for hire or reward without a permit granted by the Director-General of Civil Aviation ("Director"). According to paragraph 4 of the Legislative Council ("LegCo") Brief (File Ref: THB(T)CR 59/951/08) issued by the Transport and Housing Bureau and the Civil Aviation Department ("CAD") on 14 July 2021, as the existing civil aviation legislation mainly aims at governing the operations of manned and larger civil aircraft and is not specifically designed for unmanned aircraft, the Administration sees the need to introduce a customized and self-contained legislative framework under the Civil Aviation Ordinance (Cap. 448) to regulate

small unmanned aircraft weighing 25 kg or less at all times during the flight ("SUA"). L.N. 115 to L.N. 119 are made to regulate the operation of SUA and to provide for consequential amendments.

L.N. 116

2. L.N. 116 is a new order made by the Chief Executive ("CE") in Council under sections 2A and 12 of Cap. 448 to regulate the operation of SUA and to provide for the registration of SUA and remote pilots. The key provisions of L.N. 116 are summarized below:

- (a) Part 2 provides for, among others, the basic operating requirements and insurance requirements relating to the operation of different categories¹ of SUA, the additional requirements for flights within a restricted flying zone ("RFZ") and the carriage of dangerous goods, and various related offences (e.g. dangerous operation, causing or permitting SUA to endanger person or property, interfering with SUA and operating prohibited SUA for flights, each of which is punishable by a fine at level 6 (i.e. \$100,000) and imprisonment for two years);
- (b) Part 3 provides for, among others, the registration (and renewal thereof) of an unmanned aircraft as a registered SUA and of a person as a registered remote pilot, the assignment of rating (and renewal thereof) to a registered remote pilot, the approval of training courses and course providers, the authorization of assessors, and the application for permission for certain flight operations;
- (c) Part 4 provides for the appointment, duties and enforcement powers of authorized officers and related offences (e.g. failure to comply with a requirement made by an authorized officer, providing false or misleading information, and obstructing an authorized officer, each of which is punishable by a fine at level 6 (i.e. \$100,000) and imprisonment for two years);
- (d) Part 5 provides for, among others:
 - (i) the powers of the Director to issue safety directions and safety requirements documents (which are not subsidiary legislation), and the effect of such documents;
 - (ii) the review of and appeal against the Director's decisions (e.g. to refuse a person's application for registration of an SUA or as a registered remote pilot); and

¹ Under section 3(2) of L.N. 116, an SUA is (a) a category A1 aircraft if its weight does not exceed 250 g at all times during a flight; (b) a category A2 aircraft if its weight exceeds 250 g but does not exceed 7 kg at all times during the flight; or (c) a category B aircraft if its weight exceeds 7 kg at any time during a flight.

- (iii) other miscellaneous matters, including a defence of lawful authority or reasonable excuse for certain offences under L.N. 116, the Director's power to exempt an unmanned aircraft or a person from any or all provisions of L.N. 116, and the transitional arrangement for certain offences under L.N. 116 during the six-month period between 1 June 2022 and 30 November 2022; and
- (e) the Schedule prescribes the fees payable for various applications under L.N. 116, all of which are at present set at \$0.²

L.N. 115

3. L.N. 115 is made by CE in Council under section 4 of the Administrative Appeals Board Ordinance (Cap. 442) to amend the Schedule to Cap. 442. The effect is that appeals may be made to the Administrative Appeals Board in respect of the Director's decisions made under section 61(3) of L.N. 116 upon review to confirm, vary or reverse the Director's decisions in relation to, among others, the registration of unmanned aircraft, registration and rating of remote pilots, approval of training courses and course providers, authorization of assessors, and permission for flight operations.

L.N. 117 to L.N. 119

4. L.N. 117 to L.N. 119 are made by CE in Council under sections 2A and 12 of Cap. 448. They make consequential amendments to Cap. 448A, Cap. 448C and the Civil Aviation (Insurance) Order (Cap. 448F) respectively to the effect that Cap. 448A, Cap. 448C and Cap. 448F do not apply to or in relation to an SUA.

Consultation

5. According to paragraphs 48 and 49 of the LegCo Brief, CAD commissioned a consultancy study on the regulation of SUA in March 2017 and launched a three-month public consultation in April 2018. According to the Administration, the views collected have been taken into account in formulating L.N. 115 to L.N. 119.

6. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 12 December 2017 and 24 June 2019 on the regulation of SUA. Members in general supported the proposed regulatory regime of SUA to protect public safety, but urged the Administration to: (a) provide clear drone maps with delineation of RFZs; (b) look into the privacy issues arising from the operations of SUA; and (c) provide flexibility to cater for different types of SUA operations such as drone racing, media reporting and SUA brought into Hong Kong by visitors.

² According to paragraph 34 of the LegCo Brief, to minimize the burden on users at the initial stage of the new regime so as to promote safe operation of SUA, no fees will be charged on such applications for the first three years from the implementation of the new regime.

Commencement

7. Except for section 12(2)(c) relating to mandatory insurance for operations of certain Category A2 SUA (which comes into operation on a day to be appointed by the Director by notice published in the Gazette), all other provisions of L.N. 116 come into operation on 1 June 2022. L.N. 115 and L.N. 117 to L.N. 119 also come into operation on 1 June 2022. According to paragraph 18 of the LegCo Brief, a phased approach is adopted for the mandatory insurance requirement under L.N. 116. The Administration's plan is to conduct a review of the implementation of the first phase and readiness for commencement of the second phase (concerning certain Category A2 SUA) after L.N. 116 has commenced operation for a year.

PART II REPLACEMENT OF IDENTITY CARD

Registration of Persons (Application for New Identity Cards) Order 2018 (Amendment) (No. 2) Order 2021 (L.N. 120)

8. The Registration of Persons (Application for New Identity Cards) Order 2018 (Cap. 177J) specifies the periods ("specified periods") within which certain holders of valid Hong Kong identity cards ("HKICs") must apply for their new HKICs under the Territory-wide Identity Card Replacement Exercise ("Replacement Exercise"). Since the Replacement Exercise was interrupted due to service suspension of the Smart Identity Card Replacement Centres to contain COVID-19, Cap. 177J has been amended to revise the specified periods applicable to certain holders of valid HKICs. The last amendment was made by the Registration of Persons (Application for New Identity Cards) Order 2018 (Amendment) Order 2021 (L.N. 16 of 2021) in February 2021.³

9. L.N. 120 is made by the Secretary for Security ("S for S") under section 7B(1) of the Registration of Persons Ordinance (Cap. 177) to implement the fourth cycle of the Replacement Exercise. It amends Cap. 177J by:

- (a) adding the Tuen Mun Office at 3/F, Tuen Mun Siu Lun Government Complex, 19 Siu Lun Street, Tuen Mun as a registration of persons office specified in Part 2 of Schedule 1 to the effect that, during a period to be determined by S for S⁴, a person who is a resident of a residential care home may apply for a new HKIC at the Tuen Mun Office; and

³ Members may refer to paragraphs 1 to 5 of LS33/20-21 for details. <https://www.legco.gov.hk/yr20-21/english/hc/papers/hc20210219ls-33-e.pdf>

⁴ By virtue of section 7(2) of Cap. 177J, a person who is a resident of a residential care home at any time during the period from 27 December 2018 to a date to be determined by S for S ("relevant date") may apply for a new HKIC at any of the registration of persons offices specified in Part 2 of Schedule 1 to Cap. 177J, including the newly added Tuen Mun Office, during the two-month period beginning on the day after the relevant date.

- (b) providing for the specified periods applicable to HKIC holders born from 1977 to 1984, and 1987 to 1988 as follows:

Year of Birth shown on HKIC	Specified Period under L.N. 120
1977 to 1979	From 20 September 2021 to 18 November 2021
1980 to 1982	From 19 November 2021 to 18 January 2022
1983 to 1984 and 1987 to 1988	From 19 January 2022 to 2 April 2022

Members may refer to the LegCo Brief (with no File Reference) issued by the Security Bureau in July 2021 for further details.

10. As advised by the Clerk to the Panel on Security, the Panel has not been consulted on L.N. 120.

11. L.N. 120 comes into operation on 20 September 2021.

PART III DECLARATION OF MONUMENTS AND HISTORICAL BUILDINGS

Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2021

(L.N. 121)

12. L.N. 121 is made by the Secretary for Development ("Secretary") under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) after consultation with the Antiquities Advisory Board ("AAB") and with CE's approval. It declares the following places to be historical buildings under Cap. 53:

- (a) the buildings and the adjoining land situated within the Bonham Road Government Primary School at 9A Bonham Road, Sai Ying Pun, Hong Kong ("School");
- (b) the Old Tai Po Police Station and the adjoining land at 11 Wan Tau Kok Lane, Tai Po, New Territories ("Police Station"); and
- (c) the building known as Hip Tin Temple and the adjoining land at Lot No. 353 in D.D. 40, Shan Tsui, Sha Tau Kok, New Territories ("Temple").

13. As "monument" is defined in section 2 of Cap. 53 to include any place, building, site or structure declared to be a historical building under section 3 of Cap. 53, the effect of L.N. 121 is that the above places become monuments under Cap. 53. Under section 6(1) of Cap. 53, excavation, carrying on building or other works in the newly declared monuments or demolition of the monuments is prohibited except in accordance with a permit granted by the Secretary in his capacity as the Authority under Cap. 53. Under section 19(2) of Cap. 53, any

person who contravenes section 6(1) of Cap. 53 shall be guilty of an offence and shall be liable on conviction to a fine at level 6 (i.e. \$100,000) and imprisonment for one year.

14. According to paragraphs 11, 13 and 14 of the LegCo Brief (File Ref.: DEVB/CHO/1B/CR/141) issued by the Development Bureau on 16 July 2021, AAB has under the existing administrative grading mechanism accorded the School, the Police Station and the Temple with Grade 1 status which denotes their outstanding heritage value. Explicit agreements to the declaration proposals regarding the School (situated on government land), the Police Station (situated on government land and leased to KFBG Green Hub) and the Temple (situated on private lot under the ownership of Hip Tin Kung) have been obtained from the Education Bureau, KFBG Green Hub and Hip Tin Kung respectively.

15. As advised by the Clerk to the Panel on Development, the Panel has not been consulted on L.N. 121. However, at the meeting of the Panel on 10 May 2021, the Administration provided information about AAB's recommendation that the three historical buildings be declared as monuments as part of the "Report on Implementation Progress of Heritage Conservation Initiatives" (LC Paper No. CB(1)855/20-21(06)). Members did not raise queries on the proposed declaration during the meeting.

16. L.N. 121 came into operation on the date of its publication in the Gazette, i.e. 16 July 2021.

Concluding observations

17. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 116 and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 115 and L.N. 117 to L.N. 121.

Prepared by

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