

立法會

Legislative Council

LC Paper No. LS1/2022

Paper for the House Committee Meeting on 14 January 2022

Legal Service Division Report on Subsidiary Legislation gazetted between 15 October and 31 December 2021

Purpose

This paper annexes three reports of the Legal Service Division (“LSD”) on subsidiary legislation gazetted between 15 October and 31 December 2021 (“the Reports”) for Members’ consideration, and explains the Legislative Council (“LegCo”)’s power to amend subsidiary legislation in accordance with the statutory framework provided by law.

Background

2. The Reports cover two groups of subsidiary legislation as follows:

(a) Item subject to amendment by LegCo (**Appendix 1**)

The item of subsidiary legislation at Appendix 1 was tabled before the Sixth LegCo on 20 October 2021. It is subject to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) which empowers LegCo to amend an item of subsidiary legislation in any manner consistent with the power to make such subsidiary legislation. Under section 34(2) and (3) of Cap. 1, the period during which amendment may be made to this item is deemed to extend to and expire on the day after the second meeting of the Seventh LegCo (i.e. 19 January 2022). This period could be further extended under section 34(4) of Cap. 1 by resolution of LegCo to the first meeting held not earlier than the 21st day after the second meeting of the Seventh LegCo (i.e. 16 February 2022).

(b) Items not subject to amendment by LegCo (**Appendix 2**)

The three items of subsidiary legislation at Appendix 2 are regulations made under the United Nations Sanctions Ordinance (Cap. 537). Under Cap. 537, section 34 of Cap. 1 does not apply to such regulations.

Accordingly, they are not required to be tabled before LegCo and are not subject to amendment by LegCo.

3. Members may view the gazette version of these items of subsidiary legislation at the following website: <http://www.gld.gov.hk/egazette/>. The Reports have been separately issued vide LC Paper Nos. LS128/20-21, LS131/20-21 and LS132/20-21 as annexed.

Matters relating to subsidiary legislation covered by the Reports

Prevention and Control of Disease (Use of Vaccines) (Amendment) Regulation 2021 (L.N. 234 of 2021)

4. L.N. 234 of 2021 was made by the Chief Executive (“CE”) in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599). It amended the Prevention and Control of Disease (Use of Vaccines) Regulation (Cap. 599K), which provides for the necessary legal framework for authorization of COVID-19 vaccines in Hong Kong, to

- (a) extend the expiry date of Cap. 599K from midnight on 23 December 2021 to midnight on 23 December 2022; and
- (b) provide civil immunity to members of certain committees and panel for an act done or omitted to be done by the members in good faith in relation to the giving of advice to the Government in respect of the use of an authorized vaccine for a specified purpose,¹ or any clinical event that occurs to a recipient in Hong Kong to whom an authorized vaccine was administered for a specified purpose.

5. L.N. 234 of 2021 came into operation when it was published in the Gazette on 15 October 2021. Members may refer to the LegCo Brief (no file reference) issued by the Food and Health Bureau in October 2021 for further information.

United Nations Sanctions (Central African Republic) Regulation 2020 (Amendment) Regulation 2021 (L.N. 235 of 2021)

United Nations Sanctions (South Sudan) Regulation 2019 (Amendment) Regulation 2021 (L.N. 236 of 2021)

¹ Under section 2 of Cap. 599K, “specified purpose” means the purpose of carrying out a Government vaccination programme, or any other reasonable purpose that relates to the use of an authorized vaccine as specified by the Secretary for Food and Health.

United Nations Sanctions (Mali) Regulation 2019 (Amendment) Regulation 2021 (L.N. 238 of 2021)

6. L.N. 235, L.N. 236 and L.N. 238 of 2021 were respectively made by CE under section 3 of Cap. 537 on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council to implement certain resolutions of the Security Council of the United Nations regarding the imposition or renewal of sanctions against Central African Republic, South Sudan and Mali.

7. L.N. 235 and L.N. 236 of 2021 came into operation when they were published in the Gazette on 29 October 2021. Members may refer to the two LegCo Briefs (File Refs: CITB CR 75/53/8 and CITB CR 75/53/5/1) issued by the Commerce and Economic Development Bureau ("CEDB") in October 2021 for further information.

8. L.N. 238 of 2021 came into operation when it was published in the Gazette on 26 November 2021. Subsequent to LSD's report on L.N. 238 of 2021 (LC Paper No. LS132/20-21) issued on 2 December 2021, CEDB issued a LegCo Brief (File Ref: CITB CR 75/53/10) in late December 2021. Members may refer to the LegCo Brief for further information.

9. Under section 3(5) of Cap. 537, sections 34 and 35 of Cap. 1 shall not apply to regulations made under section 3 of Cap. 537. Therefore, L.N. 235, L.N. 236 and L.N. 238 of 2021 are not required to be tabled before LegCo and are not subject to amendment by LegCo.

Concluding observations

10. No difficulties relating to the legal and drafting aspects of the subsidiary legislation covered by the Reports have been identified.

Encls.

Prepared by

Legal Service Division
Legislative Council Secretariat
12 January 2022

**Legal Service Division Report on
Subsidiary Legislation subject to amendment by LegCo**

<u>L.N. No.</u>	<u>Item</u>
234 of 2021	Prevention and Control of Disease (Use of Vaccines) (Amendment) Regulation 2021

**Legal Service Division Report on
Subsidiary Legislation not subject to amendment by LegCo**

<u>L.N. No.</u>	<u>Item</u>
235 of 2021	United Nations Sanctions (Central African Republic) Regulation 2020 (Amendment) Regulation 2021
236 of 2021	United Nations Sanctions (South Sudan) Regulation 2019 (Amendment) Regulation 2021
†	
238 of 2021	United Nations Sanctions (Mali) Regulation 2019 (Amendment) Regulation 2021

† L.N. 237 of 2021 is a resolution made and passed by the Sixth LegCo.

立法會
Legislative Council

LC Paper No. LS128/20-21

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 15 October 2021**

Tabling in LegCo : Council meeting of 20 October 2021

Amendment to be made by : Second meeting of the Council in the next session (or the first meeting held not earlier than the 21st day after the second meeting of the next session if extended by resolution)

**Prevention and Control of Disease (Use of Vaccines)
(Amendment) Regulation 2021**

(L.N. 234)

The Prevention and Control of Disease (Use of Vaccines) Regulation (Cap. 599K) provides the legal framework for emergency authorization of COVID-19 vaccines by the Secretary for Food and Health ("SFH"). Under section 9(2) of Cap. 599K, members of the advisory panel appointed by the Chief Executive ("CE") are immune from civil liability in relation to the giving of advice to SFH regarding the authorization of COVID-19 vaccines. Cap. 599K will expire at midnight on 23 December 2021, but the immunity under section 9(2) will continue to have effect after the expiry of Cap. 599K.

2. L.N. 234 is made by CE in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) to amend Cap. 599K to:

- (a) add a new section 9A to provide an immunity similar to the one provided in section 9(2) of Cap. 599K to members of three other committees established by the Department of Health and one panel appointed by CE for giving advice to CE in respect of COVID-19¹ so that they are not civilly liable for an act done or omitted to be done by the members in good faith in relation to the giving of advice to the Government in respect of:

¹ The three committees established by the Department of Health are the Expert Committee on Clinical Events Assessment Following COVID-19 Immunisation, the Scientific Committee on Emerging and Zoonotic Diseases and the Scientific Committee on Vaccine Preventable Diseases. The Chief Executive's Expert Advisory Panel is appointed by CE for giving advice to CE in respect of COVID-19.

- (i) the use of an authorized vaccine for the purpose of carrying out a Government vaccination programme or a reasonable purpose specified by SFH ("specified purpose"); or
 - (ii) any clinical event that occurs to a recipient in Hong Kong to whom an authorized vaccine was administered for a specified purpose;
- (b) extend the expiry date of Cap. 599K from midnight on 23 December 2021 to midnight on 23 December 2022; and
 - (c) provide that the immunity provisions in section 9(2) and the new section 9A of Cap. 599K will continue to have effect after the expiry of Cap. 599K as extended by L.N. 234.

3. According to paragraphs 16 and 19 of the Legislative Council Brief issued by the Food and Health Bureau in October 2021 (no file reference), as Hong Kong has a genuine need to continue the core COVID-19 vaccination programme and to roll out a booster programme for providing additional dose(s) of COVID-19 vaccines to our population in the future, it is necessary to extend the expiry date of Cap. 599K to provide for the necessary legal framework for authorization of COVID-19 vaccines in Hong Kong. To ensure that members of the additional committees and panel covered by L.N. 234 can tender to the Government professional, fair and unhindered advice in respect of matters relating to authorization, conditions of authorization and revocation of authorization of COVID-19 vaccines without worries of possible claims of civil liability, the Administration considers it necessary to provide civil immunity to these members.

4. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 234.

5. L.N. 234 came into operation on the date of its publication in the Gazette, i.e. 15 October 2021.

6. No difficulties have been identified in the legal and drafting aspects of L.N. 234.

Prepared by

Doreen WAN
Assistant Legal Adviser
Legislative Council Secretariat
20 October 2021

立法會
Legislative Council

LC Paper No. LS131/20-21

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 29 October 2021**

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND
NOT SUBJECT TO AMENDMENT**

**United Nations Sanctions (Central African Republic)
Regulation 2020 (Amendment) Regulation 2021** (L.N. 235)

**United Nations Sanctions (South Sudan) Regulation 2019
(Amendment) Regulation 2021** (L.N. 236)

L.N. 235 and L.N. 236 are made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. They came into operation when they were published in the Gazette on 29 October 2021.

L.N. 235

2. Since 2013, the Security Council of the United Nations ("UNSC") has adopted several resolutions to impose or renew sanctions against the Central African Republic ("CAR"). These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Central African Republic) Regulation 2020 (Cap. 537CM) (as amended by the United Nations Sanctions (Central African Republic) Regulation 2020 (Amendment) Regulation 2020 (L.N. 216 of 2020)). Under section 2(3) of Cap. 537CM, provisions relating to sanction measures and related exemptions (i.e. sections 3 to 7 and 9 to 11) were in force until midnight on 31 July 2021.

3. L.N. 235 amends Cap. 537CM mainly to implement certain decisions in Resolution 2588(2021) adopted by UNSC on 29 July 2021 to renew the sanctions against (or amend the relevant conditions applicable in respect of) CAR, including the prohibitions against:

- (a) the supply, sale, transfer or carriage of arms or related materiel to CAR;
- (b) the provision of technical assistance, training or financial or other assistance related to military activities in certain circumstances;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (d) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (e) entry into or transit through the Hong Kong Special Administrative Region by certain persons.

4. The sanctions mentioned in paragraph 3 above are in force until midnight on 31 July 2022.

5. L.N. 235 also repeals certain obsolete definitions, provides for new definitions, and makes certain textual amendments to Cap. 537CM.

6. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: CITB CR 75/53/8) issued by the Commerce and Economic Development Bureau ("CEDB") in October 2021 for further information. A marked-up version showing the changes made by L.N. 235 to Cap. 537CM is at Annex C to the LegCo Brief.

L.N. 236

7. Since March 2015, UNSC has adopted several resolutions to impose sanctions against South Sudan. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (South Sudan) Regulation 2019 (Cap. 537CK) (as amended by the United Nations Sanctions (South Sudan) Regulation 2019 (Amendment) Regulation 2020 (L.N. 165 of 2020)). Under section 2(3) of Cap. 537CK, provisions relating to sanction measures and related exemptions (i.e. sections 3 to 7 and 9 to 11) were in force until midnight on 31 May 2021.

8. L.N. 236 amends Cap. 537CK to implement certain decisions in Resolution 2577(2021) adopted by UNSC on 28 May 2021 to renew the expired sanctions against South Sudan. These sanctions, which are similar to those

imposed in respect of CAR as mentioned in paragraph 3 above, are in force until midnight on 31 May 2022.

9. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/5/1) issued by CEDB in October 2021 for further information. A marked-up version showing the changes made by L.N. 236 to Cap. 537CK is at Annex C to the LegCo Brief.

Other matters

10. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3 of Cap. 537. Accordingly, L.N. 235 and L.N. 236 are not required to be tabled in LegCo and are not subject to amendment by LegCo.

11. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 235 and L.N. 236.

Concluding observations

12. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 235 and L.N. 236.

Prepared by

LEE Hoi-see, Evelyn
Assistant Legal Adviser
Legislative Council Secretariat
4 November 2021

立法會
Legislative Council

LC Paper No. LS132/20-21

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 26 November 2021**

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND
NOT SUBJECT TO AMENDMENT**

**United Nations Sanctions (Mali) Regulation 2019
(Amendment) Regulation 2021**

(L.N. 238)

L.N. 238 is made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. It came into operation when it was published in the Gazette on 26 November 2021.

2. Since 2017, the Security Council of the United Nations ("UNSC") has adopted several resolutions to impose or renew sanctions against Mali. These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Mali) Regulation 2019 (Cap. 537CL) (as amended by the United Nations Sanctions (Mali) Regulation 2019 (Amendment) Regulation 2020 (L.N. 217 of 2020)). Under section 2(2) of Cap. 537CL, provisions related to sanction measures and related exemptions (i.e. sections 3, 4, and 5) were in force until midnight on 31 August 2021.

3. L.N. 238 amends Cap. 537CL to implement certain decisions in Resolution 2590 (2021) adopted by UNSC on 30 August 2021 to renew the sanctions against Mali. It provides for, among others, prohibitions against:

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and

- (c) entry into or transit through the Hong Kong Special Administrative Region by certain persons.

4. The prohibitions mentioned in paragraph 3 above are in force until midnight on 31 August 2022.

5. As at the date of this report, no Legislative Council ("LegCo") Brief has been issued in respect of L.N. 238. Upon enquiry by the Legal Service Division, the Administration has advised that the LegCo Brief will be issued after the prorogation period.

Other matters

6. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3 of Cap. 537. Accordingly, L.N. 238 is not required to be tabled in LegCo and is not subject to amendment by LegCo.

7. As advised by the Clerk to the Panel on Commerce and Industry, the Panel has not been consulted on L.N. 238.

Concluding observations

8. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 238.

Prepared by

CHUI Ho-yin, Alvin
Assistant Legal Adviser
Legislative Council Secretariat
2 December 2021