

立法會
Legislative Council

LC Paper No. LS49/2022

**Paper for the House Committee Meeting
on 8 July 2022**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 June 2022**

Tabling in LegCo : Council meeting of 22 June 2022

Amendment to be made by : Council meeting of 13 July 2022 (or the first meeting of LegCo held not earlier than the 21st day after the meeting of 13 July 2022 if extended by resolution)

Money Lenders (Amendment) Regulation 2022 **(L.N. 139)**

Section 18(1)(b) of the Money Lenders Ordinance (Cap. 163) requires a summary of the relevant provisions of Cap. 163 (sections 18 to 25) to be included in or attached to a note or memorandum of a loan agreement in order for the loan agreement to be enforceable. The form of summary is set out in Schedule 3 to the Money Lenders Regulations (Cap. 163A). According to the preamble to Schedule 3, the summary is not part of the law, and reference should be made to the provisions of Cap. 163 itself in case of doubt. The summary of sections 24 and 25 of Cap. 163 respectively contains a reference to the interest rate cap of 60% per annum on a loan and the extortionate rate of 48% per annum specified in sections 24(1) and 25(3) respectively.

2. L.N. 139 is made by the Chief Executive (“CE”) in Council under section 34 of Cap. 163 to amend Schedule 3 to Cap. 163A by removing the specific references to 60% per annum and 48% per annum in the summary of sections 24 and 25 of Cap. 163. The effect is that the relevant summary will refer generally to the interest rate cap and the extortionate rate as respectively specified in sections 24(1) and 25(3) of Cap. 163.

3. According to paragraphs 7 and 8 of the Legislative Council (“LegCo”) Brief (File Reference: CO/2/19/3C(2021)Pt.28) issued by the Financial Services Branch of the Financial Services and the Treasury Bureau (“FSTB”) on 15 June 2022, the Administration considers that the exact figures of the interest rate cap and the extortionate rate in Schedule 3 to Cap. 163A can be omitted given that the summary of the provisions of Cap. 163 in Schedule 3 to Cap. 163A itself is not part of the law. In view of FSTB’s plan to move a motion at LegCo’s meeting of 13 July 2022 to seek LegCo’s approval to amend the interest rate cap and the extortionate rate specified in

sections 24 and 25 of Cap. 163¹, opportunity is taken to remove the references to the rates of the interest rate cap and the extortionate rate in the summary of those sections in Schedule 3 to Cap. 163A.

4. As advised by the Clerk to the Panel on Financial Affairs, in March 2022, the Administration provided an information paper (LC Paper No. CB(1)117/2022(05)) to the Panel on its plan to introduce into LegCo and implement the relevant legislative amendments to Cap. 163 within 2022. No member raised a request for discussion of the proposals at the Panel meeting.

5. L.N. 139 comes into operation on 30 December 2022.

**International Organizations (Privileges and Immunities)
(AALCO Hong Kong Regional Arbitration Centre) Order (L.N. 140)**

6. L.N. 140 is made by CE in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558). It declares that certain provisions (i.e. Articles V, VI, VII and paragraph 2 of Article VIII) of the Agreement Between the Government of the People's Republic of China and the Asian-African Legal Consultative Organization ("AALCO") on the Establishment of a Regional Centre for Arbitration in the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China ("Agreement"), signed on 10 November 2021, have the force of law in Hong Kong. These provisions, which are set out in the Schedule to L.N. 140, mainly relate to the following matters:

- (a) recognition of the legal capacity of the AALCO Hong Kong Regional Arbitration Centre ("Centre") to execute its functions and duties in the HKSAR;
- (b) the privileges and immunities of the Centre and its personnel from being liable for acts done or omitted to be done in the execution of the Centre's certain functions and duties, unless it is proved that the act was done or omitted to be done dishonestly;
- (c) inviolability of the premises of the Centre, its property, assets, archives and all documents belonging to it;
- (d) exemption from customs duties in respect of office equipment used for the Centre's official purposes and from taxation in respect of the Centre's income;
- (e) exemption from taxation in respect of the salaries and emoluments paid by the Centre to its foreign professional staff; and
- (f) providing that nothing in the Agreement shall affect the right of the Central People's Government of the People's Republic of China to apply

¹ Please see LC Paper No. LS50/2022 for further details.

any appropriate safeguard for the national security of the People's Republic of China, including the security of the HKSAR.

7. According to paragraph 3 of the LegCo Brief (File Ref.: IL/IO/1/24) issued by the Department of Justice on 13 June 2022, the Centre was officially opened on 25 May 2022. As stated in paragraph 5 of the LegCo Brief, implementation of the Agreement in Hong Kong will further enhance HKSAR's position as a leading centre for international legal and dispute resolution services in the Asia-Pacific region and beyond.

8. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has not been consulted on L.N. 140. At the Panel meeting on 23 May 2022, the Administration briefed members on the progress of setting up the Centre. In response to members' enquiries, the Administration briefly mentioned about the content of the draft order to be made by CE in Council. Members in general welcomed the establishment of the Centre.

9. L.N. 140 comes into operation on 17 November 2022.

Declaration of Increase in Pensions Notice 2022 (L.N. 141)

Widows and Orphans Pension (Increase) Notice 2022 (L.N. 142)

10. L.N. 141 and L.N. 142 are made by CE under section 4 of the Pensions (Increase) Ordinance (Cap. 305) and section 3(3) of the Widows and Orphans Pension (Increase) Ordinance (Cap. 205) respectively after consultation with the Executive Council to declare, with effect from 1 April 2022, a 2.4% increase in:

- (a) the basic pensions payable to ex-officers and dependants eligible for pension under various pieces of pension legislation as specified in Schedule 1 to Cap. 305;² and
- (b) the pensions payable under the Widows and Orphans Pension Ordinance (Cap. 94) to widows and orphans of officers.

11. Under section 4 of Cap. 305 and section 3 of Cap. 205, if the average monthly Consumer Price Index (A) ("CPI(A)") of a 12-month period ending on 31 March of a year exceeds the average monthly CPI(A) of the immediately preceding 12 months by more than 0.1%, CE must declare a percentage of increase in the relevant

² The specified Ordinances are the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254), Pensions Ordinance (Cap. 89), Pension Benefits Ordinance (Cap. 99), Pension Benefits (Judicial Officers) Ordinance (Cap. 401), Police Force Ordinance 1932 (37 of 1932), Police Officers (Special Cases) Pensions Ordinance 1954 (21 of 1954), and Surviving Spouses' and Children's Pensions Ordinance (Cap. 79).

pensions equal to the excess expressed as a percentage as soon as practicable by notice in the Gazette, and specify in the notice the effective date for such an increase.

12. As mentioned in paragraph 4 of the LegCo Brief (File Ref: CSBCR/AP/4-075-005/5 Pt. 25) issued by the Civil Service Bureau on 15 June 2022, the average monthly CPI(A) for the period from 1 April 2021 to 31 March 2022, as compared with the average monthly CPI(A) for the previous 12 months, has increased by 2.4%. L.N. 141 and L.N. 142 reflect that increase by raising the relevant pensions by the same percentage.

13. According to paragraph 8 of the LegCo Brief, no consultation with pensioners and dependants is required as a pension increase in accordance with an increase in the average monthly CPI(A) is a statutory entitlement for pensioners and dependants, and L.N. 141 and L.N. 142 are made in accordance with the relevant statutory provisions, and established policy and procedures.

14. As advised by the Clerk to the Panel on Public Service, the Panel has not been consulted on L.N. 141 and L.N. 142.

Declaration of Change of Titles (Innovation and Technology Bureau, Secretary for Innovation and Technology, Under Secretary for Innovation and Technology, Secretaries of Innovation and Technology Bureau, Administrative Assistant to Secretary for Innovation and Technology and Political Assistant to Secretary for Innovation and Technology) Notice 2022

(L.N. 143)

15. L.N. 143 is made by CE in Council under sections 45(i) and 55 of the Interpretation and General Clauses Ordinance (Cap. 1) to declare the following changes in the relevant titles concerning the retitling of the Innovation and Technology Bureau (“ITB”) as the Innovation, Technology and Industry Bureau (“ITIB”) when the new government structure comes into effect on 1 July 2022:

- (a) the title of ITB to be changed to ITIB;
- (b) references to Innovation and Technology in the titles of Secretaries of ITB³ to be changed to Innovation, Technology and Industry;
- (c) references to “and Technology” in the definitions of Permanent Secretary and Secretary in the Electronic Transactions Ordinance (Cap. 553) to be substituted by “, Technology and Industry” to the effect that Secretary and Permanent Secretary wherever appearing in Cap. 553 refer to the Secretary of ITIB and the Permanent Secretary of ITIB respectively; and

³ These include the Secretary for ITB, Permanent Secretary for ITB, Under Secretary for ITB, Deputy Secretary for ITB, Principal Assistant Secretary for ITB, Administrative Assistant to Secretary for ITB, Political Assistant to Secretary for ITB, and Assistant Secretary for ITB.

- (d) consequentially substitute references to the titles of ITB and the Secretaries of ITB wherever occurring in any instruments, contracts or legal proceedings made or commenced before 1 July 2022.

16. According to paragraph 5 of the LegCo Brief (File Ref : PICO CR 6/5/4 C) issued by the Constitutional and Mainland Affairs Bureau and the Policy Innovation and Co-ordination Office on 17 May 2022, a notice by CE in Council under section 55 of Cap. 1 to declare a change in title of a public officer or public body is one of the legislative amendments to effect the changes in the government structure from 1 July 2022. According to paragraph 18 of the LegCo Brief, the re-titling as ITIB will highlight re-industrialization as a standing policy function and work focus of the bureau. Members may refer to the LegCo Brief for further information.

17. The Subcommittee to Study the Proposal for Reorganizing the Government Structure and Related Matters formed by the House Committee to study the reorganization proposals and related matters (“Subcommittee”) has considered the draft version of the notice at Annex L to the LegCo Brief. No difficulties have been identified in relation to the legal and drafting aspects of the draft notice. Members may refer to the Report of the Subcommittee issued on 8 June 2022 (LC Paper No. CB(2)430/2022) for details. The provisions of L.N. 143 are the same as those in the draft notice considered by the Subcommittee.

18. As advised by the Clerk to the Panel on Constitutional Affairs, the Panel has not been consulted on L.N. 143.

19. L.N. 143 came into operation on 1 July 2022.

Concluding observations

20. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

CHUI Ho-yin, Alvin
Assistant Legal Adviser
Legislative Council Secretariat
6 July 2022