

**立法會**  
**Legislative Council**

LC Paper No. LS53/2022

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

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 30 June 2022**

**Tabling in LegCo** : Council meeting of 6 July 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)

**Merchant Shipping (Safety) (Fire Protection) (Ships Built Before 25 May 1980) (Amendment) Regulation 2022** (L.N. 151)

**Merchant Shipping (Safety) (Fire Appliances) (Ships Built On or After 25 May 1980 but Before 1 September 1984) (Amendment) Regulation 2022** (L.N. 152)

**Merchant Shipping (Safety) (Fire Protection) (Ships Built On or After 1 September 1984) (Amendment) Regulation 2022** (L.N. 153)

**Merchant Shipping (Prevention of Oil Pollution) (Amendment) Regulation 2022** (L.N. 154)

**Merchant Shipping (Prevention of Pollution by Sewage) (Amendment) Regulation 2022** (L.N. 155)

**Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) (Amendment) Regulation 2022** (L.N. 156)

**Merchant Shipping (Prevention of Air Pollution) (Amendment) Regulation 2022** (L.N. 157)

**Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2022** (L.N. 158)

L.N. 151 to L.N. 158 are made by the Secretary for Transport and Housing (“STH”) to implement the latest requirements under the International Maritime Dangerous Goods Code (“IMDG Code”),<sup>1</sup> the International Convention for the Prevention of Pollution from Ships, 1973 (“MARPOL”)<sup>2</sup> and the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (“AFS Convention”)<sup>3</sup> adopted by the International Maritime Organization (“IMO”) as amended from time to time and applicable to Hong Kong.

#### L.N. 151 and L.N. 152

2. L.N. 151 and L.N. 152 are made by STH under sections 99, 107 and 112B of the Merchant Shipping (Safety) Ordinance (Cap. 369). They amend the Merchant Shipping (Safety) (Fire Protection) (Ships Built Before 25 May 1980) Regulations (Cap. 369W) and the Merchant Shipping (Safety) (Fire Appliances) (Ships Built On or After 25 May 1980 but Before 1 September 1984) Regulations (Cap. 369X) respectively to update the reference in regulation 57 of Cap. 369W and regulation 64 of Cap. 369X to a chapter of the IMDG Code adopted by IMO specifying the requirements related to the stowage of explosives of certain nature and quantity.

3. L.N. 151 and L.N. 152 come into operation on 1 November 2022.

#### L.N. 153

4. L.N. 153 is made by STH under sections 99, 101, 107 and 112B of Cap. 369. It amends regulation 143(2) of the Merchant Shipping (Safety) (Fire Protection) (Ships Built On or After 1 September 1984) Regulations (Cap. 369Y) to make direct reference to the regulation of Chapter II-2 of the Annex to the International Convention for the Safety of Life at Sea in which the exceptions (i.e. ships or spaces intended for the carriage of dangerous goods in limited quantities) for complying with the protective requirements imposed under regulation 143 of Cap. 369Y are set out.

5. L.N. 153 comes into operation on 1 November 2022.

#### L.N. 154 and L.N. 155

6. L.N. 154 and L.N. 155 are made by STH under sections 3 and 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413). They amend the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A) and the Merchant Shipping (Prevention of Pollution by Sewage)

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<sup>1</sup> IMDG Code sets out the requirements for maritime transport of dangerous goods in packaged form.

<sup>2</sup> MARPOL provides for protection of the marine environment and the minimizing of pollution (e.g. by oil or by noxious liquid substances) arising from ship operations.

<sup>3</sup> AFS Convention prohibits the use of harmful organotins in anti-fouling paints on ships and establishes a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems.

Regulation (Cap. 413K) respectively to give effect to certain revisions made to Annexes I and IV to MARPOL. Under the revised Annexes I and IV, an unmanned non-self-propelled (“UNSP”) barge<sup>4</sup> may be exempted from certain survey and certification requirements for pollution prevention by oil or sewage by applying for an International Oil Pollution Prevention Exemption Certificate for UNSP Barges (“IOPPE Certificate”) or an International Sewage Pollution Prevention Exemption Certificate for UNSP Barges (“ISPPE Certificate”).

7. The major amendments made by L.N. 154 and L.N. 155 include providing for the issue of the IOPPE Certificate and the ISPPE Certificate in respect of a barge by the Director of Marine upon satisfaction of certain conditions, and the requirements to keep the IOPPE Certificate or the ISPPE Certificate on board the towing or pushing vessel during a towing or pushing operation.

8. Except for section 12 of L.N. 154 (in relation to the prohibition of the carriage or use of heavy fuel oil by a Hong Kong ship in the Arctic waters<sup>5</sup>) which comes into operation on 1 July 2024, L.N. 154 and L.N. 155 come into operation on 1 November 2022.

#### L.N. 156

9. L.N. 156 is made by STH under sections 3 and 3A of Cap. 413 to amend the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation (Cap. 413N) to give effect to certain revisions made to the AFS Convention in relation to certain control measures imposed on a ship’s anti-fouling system containing cybutryne and the replacement of the existing model form by a new model form for the International Anti-Fouling System Certificates (“IAFS Certificates”) contained in the AFS Convention. The major amendments made by L.N. 156 include:

- (a) providing for the requirements to comply with certain control measures, including that an anti-fouling system containing cybutryne must not be applied or reapplied to any ship; and
- (b) providing for the invalidation, as from certain dates, of the IAFS Certificates in the pre-amended form (the form of the IAFS Certificate specified in Appendix 1 to Annex 4 to the AFS Convention as in force immediately before the Appendix was amended by IMO Resolution MEPC. 331(76)) issued before 1 January 2023 in respect of specified pre-2023 ships and any other ship.

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<sup>4</sup> Under MARPOL, a “UNSP barge” has, among others, the following characteristics: (a) it is not propelled by mechanical means; (b) it has neither persons nor living animals on board; and (c) it has no machinery fitted that may use oil or generate oil residue (sludge); has no arrangements that could produce sewage; or has no system, equipment and/or machinery fitted that may generate emissions.

<sup>5</sup> The prohibition does not apply to a Hong Kong ship that is engaged in securing the safety of a ship, in a search or rescue operation or dedicated to oil spill preparedness and response (see the new regulation 16CA(3) as added by section 12 of L.N. 154).

10. L.N. 156 comes into operation on 1 January 2023.

#### L.N. 157

11. L.N. 157 is made by STH under sections 3 and 3A of Cap. 413 to amend the Merchant Shipping (Prevention of Air Pollution) Regulation (Cap. 413P) to give effect to certain revisions made to Annex VI to MARPOL. These revisions relate to (a) the exemption of a UNSP barge from certain survey and certification requirements for pollution prevention by air by applying for an International Air Pollution Prevention Exemption Certificate for UNSP Barges (“IAPPE Certificate”); (b) the requirement of calculating and reporting the attained Energy Efficiency Existing Ship Index (a carbon design/technical efficiency indicator) (“attained EEXI”); and (c) the requirement of calculating and reporting the attained annual operational carbon intensity indicator (an in-service or operational efficiency indicator which measures a vessel’s carbon intensity over time) (“attained annual operational CII”) of a ship specified in Annex VI.

12. In gist, L.N. 157 amends Cap. 413P to provide mainly for the requirements of the IAPPE Certificate; the requirement of calculating and reporting the attained EEXI of a ship (including the time at which the attained EEXI must be calculated); and the requirement of calculating and reporting the attained annual operational CII of a ship including the calculation of the attained annual operational CII after the end of the year of 2023 and of each subsequent calendar year.

13. L.N. 157 provides that requirements in relation to the attained EEXI and the attained annual operational CII apply to a ship that is (i) of 400 gross tonnage or above (in relation to the attained EEXI), or (ii) of 5 000 gross tonnage or above (in relation to the attained annual operational CII), and which belongs to one of the categories of ship referred to in the relevant regulations of Annex VI.

14. Except for the provisions relating to the attained EEXI and the attained annual operational CII<sup>6</sup> which come into operation on 1 January 2023, L.N. 157 comes into operation on 1 November 2022.

#### L.N. 158

15. L.N. 158 is made by STH under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). It amends the definition of “IMDG Code” in section 2 of the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) to update the reference to the IMDG Code so as to bring in line the domestic requirements regarding carriage of dangerous goods for local vessels with the requirements under the IMDG Code adopted by IMO by Resolution MSC.477(102) on 11 November 2020.

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<sup>6</sup> These provisions are sections 3(4) and (6), 5, 8, 9(5), 10, 14, 16(2), 18, 21(2), 25(2), (3), (4) and (5), 26(2), (3), (4) and (5), 27(2) and 30(2) and (3) of L.N. 157.

16. L.N. 158 comes into operation on 1 November 2022.

### Direct Reference Approach

17. It is noted that the Administration has, pursuant to section 112B of Cap. 369 and section 3A of Cap. 413, adopted the direct reference approach in L.N. 151 to L.N. 157 by referring directly to the IMDG Code, MARPOL and the AFS Convention, as updated from time to time. According to paragraph 18 of the Legislative Council (“LegCo”) Brief (File ref: THB(T)PML CR 8/10/90/1) issued by the Transport and Housing Bureau and the Marine Department (“MD”) in June 2022, this approach allows the local legislation to remain up-to-date as far as practicable.

### Consultation

18. According to paragraph 21 of the LegCo Brief, the Hong Kong Fleet Operation Advisory Committee and the Local Vessels Advisory Committee of MD were consulted on the legislative proposal in March 2022, and the High Speed Craft Consultative Committee of MD was also consulted in April 2022.

19. As advised by the Clerk to the Panel on Economic Development, the Administration briefed the Panel on 23 May 2022 on the legislative proposals to implement the latest requirements of the IMDG Code, MARPOL and the AFS Convention. Members were generally supportive of the proposals. Issues on impact of the proposals on the shipping industry, the Administration’s participation in the relevant international discussions and the mechanism of consultation with the affected parties were discussed.

## **Securities and Futures (OTC Derivative Transactions— Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2022 (L.N. 159)**

20. Under rule 6 of the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571AN), a prescribed person (e.g. an authorized financial institution or an approved money broker) must clear a specified OTC derivative transaction<sup>7</sup> (through a central counterparty) if the transaction is entered into on or after the prescribed day for the first calculation period in respect of which the person reached the clearing threshold. The currently applicable calculation periods, clearing thresholds and prescribed days are specified in Schedule 2 to Cap. 571AN. Under that Schedule, the last calculation period would end on 30 November 2022.

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<sup>7</sup> A specified OTC derivative transaction refers to a basis swap, fixed-to-floating swap (except an overnight index swap) or overnight index swap which has the features set out in Table 1, 2 or 3 of Schedule 1 to Cap. 571AN.

21. L.N. 159 is made by the Securities and Futures Commission (“SFC”) under sections 101N and 101P of the Securities and Futures Ordinance (Cap. 571) with the consent of the Monetary Authority and after consultation with the Financial Secretary. It amends Schedule 2 to Cap. 571AN by adding eight calculation periods and their respective clearing thresholds and prescribed days for the purposes of the above clearing and record keeping obligation as follows:

<b>Calculation period</b>	<b>Clearing threshold</b>	<b>Prescribed day</b>
1 March 2023 to 31 May 2023	US\$20 billion	1 January 2024
1 September 2023 to 30 November 2023	US\$20 billion	1 July 2024
1 March 2024 to 31 May 2024	US\$20 billion	1 January 2025
1 September 2024 to 30 November 2024	US\$20 billion	1 July 2025
1 March 2025 to 31 May 2025	US\$20 billion	1 January 2026
1 September 2025 to 30 November 2025	US\$20 billion	1 July 2026
1 March 2026 to 31 May 2026	US\$20 billion	1 January 2027
1 September 2026 to 30 November 2026	US\$20 billion	1 July 2027

22. According to paragraph 5 of the LegCo Brief (File Ref: CO/2/10/1C(2022)Pt.5) issued by the Financial Services and the Treasury Bureau, the Hong Kong Monetary Authority (“HKMA”) and SFC on 29 June 2022, adding new calculation periods will facilitate the continuous operation of Cap. 571AN.

23. According to paragraph 10 of the LegCo Brief, SFC and HKMA jointly consulted the market on the proposed amendments to Cap. 571AN from December 2021 to January 2022, and issued a consultation conclusions paper in April 2022. SFC and HKMA have taken into account the positive responses and comments received before finalizing L.N. 159.

24. As advised by the Clerk to the Panel on Financial Affairs, the Administration provided an information paper (LC Paper No. CB(1)216/2022(01)) to the Panel in April 2022 on the proposed amendments to Cap. 571AN. No member raised request for discussion of the proposed amendments at a Panel meeting.

25. L.N. 159 comes into operation on 1 March 2023.

## **Sale of Goods (United Nations Convention) Ordinance (Commencement) Notice**

**(L.N. 160)**

26. L.N. 160 is made by the Secretary for Justice (“SJ”) under section 1(2) of the Sale of Goods (United Nations Convention) Ordinance (Cap. 641) to appoint 1 December 2022 as the day on which Cap. 641 comes into operation.

27. Cap. 641 was published in the Gazette as Ord. No. 30 of 2021 on 8 October 2021 after the Sale of Goods (United Nations Convention) Bill (“Bill”) was passed by LegCo on 29 September 2021. It implements the United Nations Convention on Contracts for the International Sale of Goods in Hong Kong. A Bills Committee was formed to scrutinize the Bill. Members may refer to the report of the Bills Committee (LC Paper No. CB(4)1553/20-21) for further details.

28. No LegCo Brief has been issued for L.N. 160.

29. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, an information paper prepared by the Administration was issued to members of the Panel for reference on 23 June 2022 (LC Paper No. CB(4)576/2022(01)). Among other things, it was stated in the information paper that SJ will appoint 1 December 2022 as the day on which Cap. 641 comes into operation. Since the information paper was issued, no meeting of the Panel has been held and no member has raised matters in connection with the paper for discussion at a meeting.

### **Concluding observations**

30. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 151 to L.N. 160.

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