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Dear Mr LUK,

Prevention and Control of Disease Bill

General Observation

In addition to the information in the LegCo Brief, we would be grateful if you could supply us with a comparison table to show:-

- (a) clauses of the Bill which are adopted or adapted from the Quarantine and Prevention of Disease Ordinance (Cap. 141); and
- (b) reasons for not adopting or adapting those sections of Quarantine and Prevention of Disease Ordinance in the Bill.

Clause 2

Definition of "article"

Would the term "article" accord more with its ordinary meaning, if it is not defined to include "animal" and "plant"?

Definition of "building"

The term "building" does not appear independently in any clauses of the Bill, apart from appearing as a definition in clause 2 and being referred to in the definition of "premises". In what context of the Bill, would it be necessary to include "wall, gate, post, pillar, paling, frame" in the definition of "building"?

Definition of "premises"

Why does it include "any vessel lying within the waters of Hong Kong" but not other conveyances?

Definition of "isolation"

Paragraph (b) of the definition of "isolation" covers "the segregation and detention of any person or article in such a manner as to prevent the spread of a disease or contamination". From the way paragraph (b) of the definition of "isolation" is drafted, such person or article (which is defined to include an animal or a plant) may or may not have been exposed to a possible source of infection. Thus, it appears that its coverage is wide enough to include the meaning of "quarantine" as defined in clause 2, which means the segregation and detention of any person, animal or plant that may have been exposed to a possible source of infection. The term "quarantine" is not used independent of the formulation of "isolation or quarantine" in the Bill, apart from the definition clause. Why is it necessary to have the term "quarantine" in the Bill?

Definition of "medical surveillance"

Why is it necessary to distinguish "medical surveillance" from "isolation" (c.f. the definition of "surveillance" under section 2(1) of the Quarantine and Prevention of Disease Ordinance in which it specifies that persons under surveillance are not isolated)?

Definition of "vector"

Why is it necessary to exclude human being from the definition of "vector"?

Clause 3

The clause provides for power to seize an article which is an infectious agent or contains an infectious agent. It is noted that clause 7(2)(d) provides for a regulation making power relating to the prohibition, etc. of infected articles or vectors. First, why is it necessary to single out the power to deal with infectious agent in the principal ordinance while the power to deal with infected articles or vectors remains in the subsidiary legislation? Secondly, would there be similar power of seizure in the subsidiary legislation on the prohibition, etc. of infected articles or vectors?

Clause 4

Does the provision apply to articles being brought in transit?

Clause 5(2) & (3)

Would you give examples of persons to be appointed under the Bill?

Clause 6(1)(b)

Would you give examples of public officers to be appointed under the Bill?

Clause 7

In comparison to the Quarantine and Prevention of Disease Ordinance, why is it proper to transfer the regulations making power from the CE in Council to the Secretary for Food and Health?

Clause 7(1)(b)

It is noted that the regulation making power in clause 7(1)(a) is similar to that in the long title of the Bill. In this regard, is it necessary to re-write paragraph (b) as follows:-

"for the prevention of any disease among human being" (c.f. similar power in the long title of the Bill)

Clause 7(2)(d)(ii) & (iii)

It appears that the differences between "infected articles" and "vector" are as follows. First, an article does not include human being; while a vector may or may not include a human being. Secondly, an article does not include an insect; while a vector includes an insect. Apart from the aforesaid two points, are there any differences between "infected articles" and "vector"?

Clause 7(2)(g)

Is it necessary to add powers similar to those under section 8(2)(f) & (g) of the Quarantine and Prevention Disease Ordinance?

Clause 7(2)(h)

The definition of "medical surveillance" means "the regular *medical* monitoring, observation, *examination or testing* of a person with a view to ascertaining the condition of the person's health" (emphasis added). In light of the wide definition of "medical surveillance", why is it necessary to include medical examination or testing" in clause 7(2)(h)?

Clause 7(2)(l)

Would it be desirable to specify the actions the health officer is going to take in the residential premises or any other place, for example action under clause 3 or 5?
Should a police officer who intends to arrest a person under clause 5(1) in a residential premises be required to get a warrant from a magistrate?

Clause 7(2)(t)

What is the subject matter to which the "information" is related?

Clause 7(2)(u)

What are the reasons for putting the regulation making power of the application of measures in the light of any recommendation made by WHO (other than those made pursuant to article 15 of the International Health Regulations) under clause 7(2)(u); whereas the power to make order for the application of measures in the light of any

temporary recommendation made by WHO pursuant to article 15, etc. of the International Health Regulations under clause 9?

Clause 8(2)(c)

In paragraph 10 of the LegCo Brief, it says that "[s]ome of the measures mentioned above for the purpose of preventing and controlling the spread of diseases, such as seizure and surrender of articles, and requisition of private property, may be considered as interference with or, in some cases, de facto deprivation of property rights". Which measures, in the corresponding clauses, are considered to be:-

- (a) interference with property rights; and
- (b) de facto deprivation of property rights?

Clause 8(4)

In the definition of "public health emergency", would you give examples to illustrate the meaning of "serious disabilities"?

Clause 9(2)

In order not to cause confusion as to whether an order published in the Gazette under clause 7(4) or a notice published in the Gazette under clause 15 is a subsidiary legislation, would it be desirable to add the formulation such as "For the avoidance of doubt" before "[a]n order under subsection (1) is subsidiary legislation"?

Clause 12(1)

Would you specify under which clause, an article is surrendered pursuant to the Bill, so as to trigger the operation of a compensation order under clause 12(1)?

Would you specify under which clause, an article is submitted to any person pursuant to the Bill, so as to trigger the operation of a compensation order under clause 12(1)?

Clause 12(3)

Why does not clause 12(1) apply to cases for which compensation is provided for by regulations made under clause 8?

Clause 13(1)

The provision provides for immunity from personal liability of health officers, etc. in respect of anything done or omitted to be done by the health officer, etc. *in good faith* in the exercise of a power, etc. under the Bill. Upon a search, it shows that similar immunity in respect of a public officer is usually drafted in the formulation of a "in the honest belief" (see s.48C(1) of Cap. 282, s.14A(1) of Cap. 59, s.31(1) of Cap. 499, s.15A(1) of Cap. 403, s.29(1) of Cap. 400, s.23(1) of Cap. 476, s.42(2) of Cap. 311 and s.45(2) of Cap. 358); whereas the formulation of "in good faith" is used in s.75(1) of Cap. 426 and s.6 (1) of Cap. 415. would you clarify whether there is any difference between the two formulations? If no, would it be desirable to achieve consistency in drafting by using either formulation. If one formulation is to be used, which one is preferable and why?

Clause 14

What is the justification for having the clause to exempt the internal management, etc. of vessels or aircraft of war of the Chinese People's liberation Army or foreign vessels or aircraft of war from the Bill? It appears that there is no similar provision in the Quarantine and Prevention of Disease Ordinance.

What is the meaning of "internal management"?

Clause 17

What is the justification for retaining the Boats and Wharves (Supply of Water) Regulations (Cap. 141 sub. leg. A)?

We look forward to receiving your reply in both languages as soon as possible.

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

Encl

c.c. DoJ

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