

**For information
on 26 March 2008**

**Bills Committee on the
Prevention and Control of Disease Bill**

**Response to the Law Society of Hong Kong's submission
on the Prevention and Control of Disease Bill dated 10 March 2008**

The authority to order the payment of compensation under clause 12(1)

Given that most of the powers in the Bill and the subsidiary legislation will be exercised by health officers, who are mostly staff of the Department of Health, it is appropriate to empower the Director of Health, who has the best knowledge of the health officers' work, to decide whether compensation is payable and the appropriate amount when there is such a claim for articles damaged, destroyed, etc. pursuant to the new legislation. Although clause 12(2) of the Bill provides that the Director of Health may order the payment of compensation as is just and equitable, his discretion of making such an order is still subject to judicial scrutiny according to the principles of administrative law. That is to say, the Director of Health is still bound by common law in the course of reaching the decision on whether or not an order is to be made.

Using arbitration to resolve disputes over compensation claims

2. Section 17 of the Quarantine and Prevention of Disease Ordinance (Cap. 141) provides that any dispute as to the amount of compensation in relation to requisition of vehicles or vessels or the destruction of articles shall, in default of agreement, be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341). Our proposal in the Bill merely continues the use of arbitration to resolve disputes over compensation claims in the new legislative framework for prevention and control of disease. Furthermore, different from section 17 of the Quarantine and Prevention

of Disease Ordinance, clause 12(2) of the Bill provides that any dispute over compensation claims may be resolved or determined by arbitration. It does not preclude a claimant from bringing the case before the court or using other forms of dispute resolution. Hence, it will be up to the parties to decide whether to resort to arbitration as provided for in the Bill, having regard to the advantages and disadvantages of arbitration in any particular circumstances.

Compensating the financial loss suffered by people isolated / quarantined

3. A person may be put under isolation / quarantine only if a health officer has reason to believe that he is a contact of or is infected with a specified infectious disease (i.e. an infectious disease specified in Schedule 1 to the Bill or a disease caused by an infectious agent specified in Schedule 2 to the Bill). The health conditions of the person under isolation / quarantine will also be continuously monitored and he will be released from isolation / quarantine as soon as a health officer considers that he is not infectious (e.g. when he is effectively treated as indicated by medical test results, or on the lapse of the incubation period for the disease concerned) or the isolation / quarantine can be replaced by medical surveillance, which is less restrictive than isolation / quarantine.

4. We cannot emphasize more the importance of immediate segregation of the person mentioned above from the general public because of the risk of spreading a specified infectious disease in the community. The person may have been infected with, or is incubating or has been exposed to the disease and is thus capable of spreading the disease to other people. While we understand the pressure experienced by people who are isolated or quarantined, we maintain the view that no compensation should be provided for financial loss suffered by such people as explained in LC Paper No. CB(2)1170/07-08(02) discussed at the Bills Committee meeting of 28 February 2008. Also, legally, a person who is lawfully placed under isolation or quarantine does not have a right to claim compensation and the Government is under no obligation to pay compensation if the health measure to which the person is subjected entails no breach of the Hong Kong Bill of Rights Ordinance (Cap. 383), whether or not the person affected is in fact infected with an

infectious disease.

5. Having said that, to minimize disrupting the daily life of a person isolated / quarantined, a health officer, as far as possible, may order the isolation / quarantine be carried out at the person's home unless it is not appropriate to do so, e.g. where the person is sick and is required to receive treatment in a hospital, or the person's home is suspected to be a source of infection and therefore keeping him there may further expose him to the risk of infection.

Defining "requisition" in the Bill

6. We will consider providing a definition of "requisition" under clause 8 of the Bill. Members may wish to refer to our response in paragraph 9 of LC Paper No. CB(2)1419/07-08(01) prepared for this meeting.

Including a compensation scheme in the Public Health Emergency Regulation

7. We will provide a compensation scheme in the Public Health Emergency Regulation to be made under clause 8 of the Bill. Members may wish to refer to paragraphs 6-8 of LC Paper No. CB(2)1304/07-08(01) prepared by the Administration and discussed at the Bills Committee meeting of 11 March 2008.

Food and Health Bureau
March 2008