

LEGISLATIVE COUNCIL BRIEF

Prevention and Control of Disease Bill

INTRODUCTION

At the meeting of the Executive Council on 4 December 2007, the Council ADVISED and the Chief Executive (“CE”) ORDERED that –

- (a) the existing Quarantine and Prevention of Disease Ordinance (“the Ordinance”) (Cap. 141) should be repealed; and
- (b) the Prevention and Control of Disease Bill, at **Annex A**, should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

Compliance with the International Health Regulations (“IHR”)(2005)

2. The IHR (2005) of the World Health Organization (“WHO”), which seek to prevent, protect against, control and provide a public health response to the international spread of disease, have entered into force on 15 June 2007 and replaced IHR (1969) for combating international health risks. The scope of the IHR (2005) has been broadened considerably from basically covering three quarantinable diseases (i.e. cholera, plague and yellow fever) to any disease of public health importance which can spread internationally. Main provisions of the IHR (2005) include -

- (a) routine public health measures (including inspection and control activities) on travellers, conveyances and goods at international airports and ports to prevent international spread of disease (including disease caused by contamination);

- (b) a requirement for States Parties to notify the WHO of all events that may constitute a public health emergency of international concern¹;
- (c) requirements on the core capacity for surveillance, report and response to public health events; and
- (d) procedures for the WHO to make recommendations on areas affected by public health threats, to prevent international spread of disease (including disease caused by contamination).

3. The IHR (2005) are a set of legally binding regulations for WHO States Parties (China is one of them), providing for a global response to public health threats. States Parties to the Regulations have up to five years to assess and develop their core capacities for surveillance of and prompt and effective response to public health risks and public health emergencies of international concern. They have been extended to Hong Kong pursuant to Article 153 of the Basic Law. While Hong Kong should be able to meet the basic requirements of the IHR (2005) during peacetime by exercising its existing powers under the Ordinance, supplemented by administrative measures, we need to update our legal framework to strengthen the monitoring of and to impose control measures on cross-boundary conveyances, points of entry (including the airport and ports) and travellers to ensure our ability to comply with IHR (2005), especially during disease outbreaks.

4. To prevent cross-boundary spread of diseases, it is necessary to establish robust routine preventive measures to ensure, as far as possible, that the points of entry, cross-boundary conveyances, travellers, goods and other things passing into or out of Hong Kong are free from infection or contamination. Moreover, effective disease surveillance systems should be established to ensure timely detection of diseases and contamination at the boundary control points. To these ends, we **propose** that a health officer (“HO”)² has the powers to –

¹ According to the IHR (2005), a public health emergency of international concern refers to an extraordinary public health event which is determined: (a) to constitute a public health risk to other States through the international spread of disease; and (b) to potentially require a coordinated international response.

² “Health officer” refers to the Director of Health; Deputy Director of Health; Controller,

- (a) require operators to take reasonable steps to ensure that points of entry and cross-boundary conveyances are kept in sanitary condition, and where necessary, to require measures to be implemented, including but not limiting to disinfection, disinsection, and deratting for the prevention and control of spread of infectious diseases into or out of Hong Kong;
- (b) require provision of relevant information by operators concerning cases of infectious disease, or sources of infectious disease or contamination on board a cross-boundary conveyance or at a point of entry; and
- (c) inspect points of entry and cross-boundary conveyances and to order their cleansing, disinfection, etc. and to inspect and issue relevant certificates, such as the Ship Sanitation Control Exemption Certificate, in compliance with the IHR (2005).

5. When there is an outbreak in Hong Kong or elsewhere, or when there is an imminent threat of such an outbreak, we will need to implement control measures in a timely manner to prevent any cross-boundary spread of disease. Legal powers are also needed to implement recommendations on response measures which may be issued by the WHO from time to time, having regard to the disease outbreak situation in a particular area. For these purposes, we **propose** –

- (a) with respect to travellers –
 - (i) to empower a HO to require travellers to produce relevant health declarations, and, having regard to the circumstances and the recommendations of the WHO, to require proof of vaccination or prophylaxis;
 - (ii) to empower a HO to require medical surveillance, to conduct necessary medical examination or tests on travellers or to order isolation or quarantine of any traveller who is or is likely to be a contact or infected person;
 - (iii) to empower a HO to prohibit a contact of or a person infected

Centre for Health Protection of the Department of Health; or a medical practitioner appointed by the Director of Health as a health officer or port health officer.

with a specified disease (i.e. Severe Acute Respiratory Syndrome (“SARS”), Avian Influenza or Extensively Drug-Resistant Tuberculosis) from leaving Hong Kong, or after having regard to WHO’s recommendations, to prohibit travellers from leaving Hong Kong; and

- (b) with respect to points of entry and conveyances –
 - (i) to empower a HO to order isolation of any point of entry or cross-boundary conveyance or any part of it, where necessary, for the prevention of the spread of infectious disease;
 - (ii) to empower a HO, as the case requires, to seize, isolate, disinfect and, if necessary, destroy infected articles found at a point of entry or on board a cross-boundary conveyance;
 - (iii) to empower a HO, having regard to the circumstances and the recommendations of the WHO, to prohibit the departure from or entry into Hong Kong of conveyances; and
 - (iv) to empower a HO, having regard to the circumstances and the recommendations of the WHO, to prohibit the departure from or entry into Hong Kong of articles at a point of entry or on board cross-boundary conveyances.

Disease Control Structure

6. The SARS Expert Committee established by the Government recommended in its report published in October 2003 that, among other things, the adequacy of existing legislation should be reviewed in order to expand the list of notifiable diseases, establish the primacy of the Department of Health (“DH”) in the control of infectious disease outbreaks, and clarify the legal powers available to enforcement officers. These recommendations are compatible with IHR (2005). The proposals above take into account the findings of our comprehensive review of the existing legal framework for the prevention and control of infectious disease having regard to our experience during the SARS outbreak. To ensure that it is up-to-date and capable of dealing with new and re-emerging diseases, both in peacetime and during a public health emergency, we **propose** to –

- (a) update and expand the existing list of notifiable diseases to include infectious diseases of public health concern having regard to the current local epidemiology of infectious diseases;
- (b) require notification of any release of dangerous infectious agents and empower the Director of Health (“Director”) to require the surrender of such agents for proper disposal so as to prevent the spread of disease in the community;
- (c) empower a HO, with the written approval of the Director, to seize infectious agent of a disease or an article containing it, and to cause tests to be performed on the same to gather further information on the disease for the purpose of preventing the spread or controlling of the disease that constitutes a public health risk;
- (d) require medical practitioners to provide information that is within their knowledge relating to cases of infectious disease to facilitate investigation and contact tracing;
- (e) empower a HO to place contacts and infected persons under medical surveillance; and
- (f) clarify the power to order isolation or quarantine of persons who are believed to be contacts or infected.

7. To enhance our preparedness for any major disease outbreaks in Hong Kong, we need to ensure that the DH has the surge capacity to respond effectively and efficiently to public health emergencies. To this end, we have made considerable investment in the health care system in the past few years, including the establishment of the Centre for Health Protection in the DH, and, among other things, the provision of isolation facilities, testing facilities and antiviral stockpiles. However, further power is considered necessary to enable the Government to contain the situation of any major disease outbreak in Hong Kong within the shortest possible timeframe. For this, we **propose** to –

- (a) empower the Chief Executive (“CE”) in Council to make a Prevention and Control of Disease (Public Health Emergency) Regulation (“Public Health Emergency Regulation”) when an occasion of public health emergency exists for the purpose of combating and

controlling the emergency situation;

- (b) empower the Government to access and disclose information to the public relating to the state of public health emergency for the purpose of protecting public health;
- (c) provide for the requisition of private property (e.g. vaccines, medicine, personal protective gear, vehicles, vessels, etc.) by the Government during a state of public health emergency; and
- (d) enable the temporary appointment of qualified but unregistered health care personnel to perform necessary tasks and duties under the direction of the Director during an emergency.

8. The CE in Council will make the Public Health Emergency Regulation on the advice of Secretary for Food and Health (“SFH”), who will consult the Director for his professional assessment and advice. When it is considered that the state of public health emergency has ceased, we will invite the CE in Council to repeal the Public Health Emergency Regulation made for that particular occasion.

9. The above proposals are essential to ensure that public health measures can be effectively carried out at times of emergency. We must emphasise that any such decision will only be made and powers be exercised in very exceptional circumstances.

10. Some 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. To ensure compliance with Article 105 of the Basic Law³, the fair balance or proportionality requirement which may be implicit under that Article and Article 6⁴ (i.e. that in respect of any control of property, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized), and compliance with the requirements under

³ Article 105 of the Basic Law provides for real value compensation for lawful deprivation of property.

⁴ Article 6 of the Basic Law provides that the HKSAR Government shall protect the right of private ownership of property in accordance with law.

applicable international agreements for compensation to be paid, we **propose** to –

- (a) explicitly provide for the compensation for the requisition of any property; and
- (b) provide that any compensation ordered by the Director where any article is damaged, destroyed, seized, surrendered or submitted to any person under statutory authority should be just and equitable in the circumstances.

THE BILL

11. Given that the existing Ordinance has been enacted for over 70 years, with subsequent amendments made from time to time, we have taken the opportunity to revamp the approach of the entire statutory framework. As the first step, we have prepared the new Bill to replace the Ordinance. Unlike the existing Ordinance, the Bill only contains fundamental and enabling provisions, such as those providing for the power of arrest, seizure and forfeiture; the making of regulations (including those for handling a public health emergency); etc. Provisions that are operational in nature, such as the notification of cases of infectious disease, disease prevention, isolation and quarantine of persons, etc. will be included in a new subsidiary legislation, to be named the Prevention and Control of Disease Regulation, which will be made by SFH after the enactment of the Bill. The Regulation will provide a holistic plan of measures for the prevention, surveillance and control of infectious diseases and cross-boundary spread of disease in respect of Hong Kong residents, travellers, goods and cross-boundary conveyances.

12. After the enactment of the Bill, most of the subsidiary legislation of the Ordinance will be repealed because they have either become irrelevant under the new regime, or will be modernised and subsumed under the new Prevention and Control of Disease Regulation. The new Prevention and Control of Disease Ordinance and the Prevention and Control of Disease Regulation will commence on the same date to be appointed by SFH.

13. The main provisions of the Bill are –

- (a) **Clause 3** provides that a HO may, with the written approval of the Director, seize any article that the HO has reason to believe is an infectious agent or contains an infectious agent;
- (b) **Clause 4** provides that a HO may forfeit any article that is taken into Hong Kong illegally;
- (c) **Clause 5** provides for the power of a HO, etc. to stop, detain and arrest a person who has committed or is committing an offence under the Bill or who has obstructed or assisted in the obstruction of the HO, etc. in the performance of statutory functions;
- (d) **Clause 6** provides for the power to arrest a person who escapes from detention;
- (e) **Clause 7** empowers SFH to make regulation for the purpose of the prevention of any disease and the spread of any disease and contamination;
- (f) **Clause 8** empowers the CE in Council to make public health emergency regulation for the purposes of preventing, combating or alleviating the effects of a public health emergency and protecting public health;
- (g) **Clause 9** empowers the Director to prescribe by an order published in the Gazette any measure to be applied in the light of any temporary recommendation made by the WHO;
- (h) **Clause 10** requires the Commissioner of Police to furnish police assistance on the request of a HO;
- (i) **Clause 11** provides for the offence of obstructing or assisting in the obstruction of a HO, etc. in the performance of statutory functions;
- (j) **Clause 12** provides that the Director may order just and equitable compensation to be paid for any article that is damaged, destroyed, seized, surrendered or is submitted to any person pursuant to statutory authority;

- (k) **Clause 13** provides for the immunity from any personal liability in respect of anything done or omitted to be done by a HO, or any public officer or persons acting under the direction of the HO;
- (l) **Clause 14** provides that the Bill does not affect vessels or aircraft of war;
- (m) **Clause 15** empowers the Director to amend Schedules 1 and 2 to the Bill referred to in sub-paragraphs (o) and (p) below by way of a notice published in the Gazette;
- (n) **Clause 16** repeals the Ordinance and five pieces of subsidiary legislation made under it;
- (o) **Schedule 1** contains 45 infectious diseases that are to be controlled by the Bill; and
- (p) **Schedule 2** contains 31 infectious agents that are to be controlled by the Bill.

14. A table setting out the major deletion and addition of powers under the Bill as compared to the existing Ordinance is at **Annex B**.

LEGISLATIVE TIMETABLE

15. The legislative timetable is as follows –

Publication in the Gazette	7 December 2007
First Reading and commencement of Second Reading debate	19 December 2007
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

16. The proposal has economic, financial and civil service, and sustainability implications as set out at **Annex C**. It has no environmental implications. The binding effect of the Bill is the same as that of the Ordinance it repeals. The Bill is in conformity with the Basic Law, including provisions concerning human rights.

PUBLIC CONSULTATION

17. We have consulted private medical practitioners, medical associations, the Hospital Authority and the Scientific Committees of the Centre for Health Protection on the proposed expansion of the current list of notifiable diseases and their response was positive.

18. We have also consulted the aviation, shipping, logistics, operators of point of entry and other cross-boundary conveyance trades through the relevant advisory bodies, trade associations as well as the key players in the fields regarding the proposed measures to prevent and control the spread of diseases. They were generally supportive of the proposals and considered them essential for the protection of public health. Some expressed concerns over the impacts of the proposed measures on their business operations, and pointed out the need for the DH to provide guidelines in due course for the implementation of health measures. The DH will work closely with the relevant stakeholders to address such concerns and to ensure smooth implementation of the proposed measures.

19. We consulted the Panel on Health Services of the Legislative Council on 12 February 2007. Members present indicated their support for the proposals in principle.

PUBLICITY

20. We will issue a press release and hold a press briefing on 5 December 2007. A spokesman will be made available to answer enquiries.

ENQUIRIES

21. Any enquiries on this Brief may be addressed to Miss Pamela LAM, Principal Assistant Secretary for Food and Health (Health)1 at 2973 8203.

Food and Health Bureau
December 2007

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A BILL

To

Provide for the control and prevention of disease among human beings; to prevent the introduction into, the spread in and the transmission from, Hong Kong of any disease, source of disease or contamination; to apply relevant measures of the International Health Regulations promulgated by the World Health Organization; and to provide for connected purposes.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Prevention and Control of Disease Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires –

“article” (物品) includes –

- (a) an animal (other than a human being);
- (b) a plant; and
- (c) any other thing or substance (including, but not limited to, conveyances and any kind of movable property),

and, to avoid doubt, includes mail of any kind;

“building” (建築物) includes any house, hut, shed or enclosure with or without roof, whether needed for the purpose of human habitation or otherwise, and also includes any wall, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing stage or bridge;

“contact” (傳染病接觸者) means any person who has been, or is likely to have been, exposed to the risk of contracting an infectious disease;

“contaminated” (污染) means the presence of a toxic agent or matter on the surface of or inside the body of, or in, a human being or an article in a manner that may pose a public health risk;

“conveyance” (運輸工具) includes a vessel, vehicle, aircraft and any other means of travel or transport;

“Director” (署長) means the Director of Health;

“health officer” (衛生主任) means –

(a) the Director of Health, the Deputy Director of Health, or the Controller, Centre for Health Protection of the Department of Health; or

(b) a medical practitioner appointed by the Director as a health officer or port health officer;

“infected” (感染、受感染) means the presence of an infectious agent on the surface of or inside the body of, or in, a human being or an article;

“infectious agent” (傳染性病原體) means a parasite, a fungus, a bacterium, a virus, a prion or any other agent that can cause an infectious disease;

“International Health Regulations” (《國際衛生條例》) means the International Health Regulations (2005);

“isolation” (隔離) means –

(a) the isolation of an area or a place in such a manner as to prevent the spread of a disease or contamination; or

- (b) the segregation and detention of any person or article in such a manner as to prevent the spread of a disease or contamination;

“laboratory” (化驗室) means an establishment that possesses or performs tests on any infectious agent;

“medical surveillance” (醫學監察) means the regular medical monitoring, observation, examination or testing of a person with a view to ascertaining the condition of the person’s health;

“place”. (地方) includes –

- (a) premises and a conveyance; and
(b) any part of a place;

“premises” (處所) includes any land, building, structure of any kind, footway, yard, alley, court, garden, stream, nullah, pond, pool, field, marsh, drain, ditch or place open, covered or enclosed, or cesspool or foreshore, and also includes any vessel lying within the waters of Hong Kong;

“public health risk” (公共衛生危險) means a risk of serious and direct danger to the health of human beings;

“quarantine” (檢疫) means the segregation and detention of any person, animal or plant that may have been exposed to a possible source of infection, in order to prevent the spread of a disease;

“scheduled infectious agent” (表列傳染性病原體) means an infectious agent specified in Schedule 2;

“scheduled infectious disease” (表列傳染病) means an infectious disease specified in Schedule 1;

“vector” (媒介) means an animal (including an insect) that transports or transmits an infectious agent;

“WHO” (世衛) means the World Health Organization.

PART 2

POWERS OF SEIZURE AND FORFEITURE

3. Power to seize articles

(1) With the approval in writing of the Director, a health officer may, for the purpose of the control or preventing the spread of any disease that poses a public health risk, seize any article or part of an article if the health officer has reason to believe the article or the part –

- (a) is an infectious agent; or
- (b) contains an infectious agent.

(2) A health officer may cause any tests to be performed on an article or part of it that is seized under subsection (1).

(3) The owner of the article or part of the article or a person who has possession of the article or the part shall furnish such reasonable assistance as a health officer may require of that person for the purpose of exercising the health officer's power of seizure.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

4. Forfeitures of articles

(1) If a person lands or attempts to land, or otherwise brings into Hong Kong, any article in contravention of this Ordinance, the article shall be liable to be forfeited by a health officer.

(2) Subsection (1) does not apply to the landing of or bringing into a place of isolation or quarantine any article under the direction of a health officer.

PART 3

POWERS OF ARREST

5. Powers of arrest

(1) If a health officer or a police officer reasonably suspects that a person has committed or is committing an offence under this Ordinance, the health officer or the police officer may stop, detain or arrest that person without warrant.

(2) If a person obstructs a health officer, a police officer, or a public officer or a person appointed under this Ordinance in exercising a power or performing a function under this Ordinance, or assists in any such obstruction, the health officer, the police officer, or the public officer or the person appointed under this Ordinance may arrest that person without warrant.

(3) Where a health officer, or a public officer or a person appointed under this Ordinance arrests a person under this section, the health officer, or the public officer or the person appointed under this Ordinance shall deliver the person arrested to a police officer as soon as practicable.

(4) This section is in addition to and not in derogation of the powers or authority a police officer would have apart from this section.

6. Escape from detention

(1) If a person who is detained under this Ordinance escapes, he may be arrested by –

- (a) any member of the staff of the hospital, the reception place, or the place of isolation or quarantine from which he escaped;
- (b) any public officer appointed under this Ordinance;
- (c) any police officer; or
- (d) any member of the Auxiliary Medical Service or Civil Aid Service,

and may be conveyed to the place from which he escaped or any other place authorized by a health officer and detained in that place.

(2) If a person who is detained under this Ordinance escapes or attempts to escape, he commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

PART 4

REGULATION

7. Power to make regulation

(1) The Secretary for Food and Health may make regulations (“the regulation”) –

- (a) for the purpose of preventing the introduction into, the spread in and the transmission from, Hong Kong of any disease, source of disease or contamination; and
- (b) for the prevention of any disease.

(2) Without limiting the generality of subsection (1), the regulation may provide for any or all of the following –

- (a) the appointment of health officers, other public officers and any other person for the purposes of this Ordinance, and their powers, duties and functions;
- (b) the form and mode of service of notices and other documents;
- (c) fees to be paid under this Ordinance;
- (d) the prohibition or regulation of the disposal, importation, transit, transshipment, exportation or removal of –
 - (i) organs, tissue, cells, dead bodies or remains (whether of human beings or animals);
 - (ii) infected articles; or
 - (iii) vectors;

- (e) the prohibition or regulation of –
 - (i) the admission of persons into Hong Kong or their movements within or their departure from Hong Kong; and
 - (ii) the importation, transit, transshipment or exportation of any article;
- (f) the isolation or quarantine of any person, article or place and their management or disposal while under isolation or quarantine and the occupation of any place required for isolation or quarantine;
- (g) in relation to conveyances –
 - (i) the prohibition or regulation of their arrival or landing in or departure from Hong Kong;
 - (ii) the disembarking of any person or the unloading of any article from them;
 - (iii) matters relating to pratique;
 - (iv) precautions with regard to drinking water and food stuff taken on board conveyances and the water taken in as ballast by them; and
 - (v) the granting of certificates in respect of their sanitariness;
- (h) subjecting any person to medical surveillance or medical examination or testing, and matters relating to vaccination and prophylaxis;
- (i) the prohibition or regulation of the movements of contacts, infected persons or persons suspected of being infected;
- (j) examination of dead bodies and certification of the cause of death;
- (k) the occupation of any place required for the treatment of any person;

- (l) empowering a magistrate to issue a warrant authorizing a health officer to enter or break into any residential premises, and empowering a health officer to enter or break into any other place;
- (m) the action that a health officer may take in any residential premises or other place referred to in paragraph (l) after entering or breaking into it, including –
 - (i) the inspection and searching of the residential premises or place;
 - (ii) the inspection of any person or dead body in the residential premises or place;
 - (iii) the seizure of any article in the residential premises or place; and
 - (iv) the taking of photographs and the making of any video or sound recording;
- (n) stopping, removing or detaining any person, conveyance or article;
- (o) different kinds of disease or contamination control measures, and ordering or applying such measures in respect of any person, place or article;
- (p) the destruction of any article referred to in paragraph (o) or the prohibition or regulation of its removal or the closing of any place for applying any measures referred to in paragraph (o);
- (q) the regulation of the sanitariness of any place;
- (r) in relation to any laboratory in which infectious agents are handled –
 - (i) the control of such handling;
 - (ii) the registration of the laboratory and matters relating to registration; and

- (iii) empowering the Director to impose any precautionary measure relating to the handling of any scheduled infectious agent;
- (s) seizing or destroying any infectious agent or any infected or contaminated article and the collection or submission of any sample or article for the purpose of examination or testing or regulating the sanitariness of any place or keeping any place free from contamination;
- (t) the collection and compulsory provision of any information, compulsory reporting of cases of any disease, death, contamination or leakage of an infectious agent or a toxic agent or any other matter, the inspection of any documents or records and their submission for that purpose;
- (u) 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);
- (v) the carrying out under the direction of a health officer by any person of any act or thing that the health officer is empowered to do under the regulation;
- (w) the liability of any person in respect of the costs that are incurred in connection with the enforcement of this Ordinance and the payment to the Government of any expenses charged or incurred for the medical attendance and maintenance of any person in connection with such enforcement; and
- (x) any other matter that appears to the Secretary for Food and Health to be necessary or expedient for the carrying out of the purposes specified in subsection (1).

(3) The regulation may provide that a contravention of any provision of the regulation is an offence punishable with a fine not exceeding level 3 and a term of imprisonment not exceeding 6 months.

(4) The Secretary for Food and Health after consultation with the Secretary for Financial Services and the Treasury may by order published in the Gazette amend the fees prescribed in the regulation.

8. Public health emergency regulation

(1) On any occasion which the Chief Executive in Council considers to be an occasion of a public health emergency, he may make regulations (“the regulation”) for the purposes of preventing, combating or alleviating the effects of the public health emergency and protecting public health.

(2) Without limiting the generality of subsection (1), the regulation may provide for –

- (a) requirements on a person to disclose or furnish any information that is relevant to the handling of a state of public health emergency;
- (b) the disclosure to the public by a public officer of any information that is relevant to the handling of a state of public health emergency;
- (c) the requisitioning of property and matters relating to compensation for such requisition;
- (d) matters relating to the appointment of any person to act as a medical and health professional, the control of such appointed person, and the deeming of such appointed person to be registered under any enactment; and
- (e) such incidental and supplementary matters as appear to the Chief Executive in Council to be necessary or expedient for the purposes of the regulation.

(3) The regulation may provide that a contravention of any provision of the regulation is an offence punishable with a fine not exceeding level 5 and a term of imprisonment not exceeding 6 months.

(4) In this section, “public health emergency” (公共衛生緊急事態) means –

- (a) the occurrence of or the imminent threat of a disease, an epidemic or a pandemic;
- (b) the occurrence of a novel, or highly infectious, agent or matter; or
- (c) the widespread exposure or the imminent threat of widespread exposure of human beings to an infectious agent,

that has a high probability of causing a large number of deaths in the population or a large number of serious disabilities (whether or not long-term) in the population.

9. Measures applied in light of WHO’s temporary recommendations

(1) The Director may, for the purposes of preventing the introduction into, the spread in and the transmission from, Hong Kong of any disease, by order published in the Gazette, prescribe any measure to be applied in the light of any temporary recommendation made by WHO pursuant to articles 15, 17 and 18 of the International Health Regulations.

(2) An order under subsection (1) is subsidiary legislation.

PART 5

MISCELLANEOUS

10. Police to furnish assistance

The Commissioner of Police shall furnish such police assistance as any health officer may require for the purpose of enabling the health officer to –

- (a) exercise the powers conferred on the health officer by this Ordinance; and
- (b) deal with vessels and aircraft and persons and things on board the vessels and aircraft in the manner prescribed by this Ordinance.

11. Obstruction of health officers, etc.

(1) A person shall not obstruct, or assist in obstructing a health officer, a police officer, or a public officer or a person appointed under this Ordinance, in the exercise of a power or performance of a function under this Ordinance.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 2 months.

12. Compensation

(1) Where any article is damaged, destroyed, seized, surrendered or is submitted to any person pursuant to this Ordinance, the Director may order the payment of such compensation as is just and equitable in the circumstances.

(2) Any dispute as to whether compensation is payable or the amount of compensation may, in default of agreement, be resolved or determined by arbitration in accordance with the Arbitration Ordinance (Cap. 341).

(3) Subsection (1) does not apply to cases for which compensation is provided for by regulations made under section 8.

13. Immunity from personal liability of health officers, etc.

(1) No personal liability is incurred by a health officer, or a public officer or a person acting under his direction in respect of anything done or omitted to be done by the health officer, or public officer or person in good faith in the exercise or purported exercise of a power, or performance or purported performance of a function, under this Ordinance.

(2) The protection conferred by subsection (1) does not affect any liability in tort of the Government for that act or omission.

14. Internal management of vessels or aircraft of war not to be interfered with

This Ordinance shall not in any way interfere with the internal management of any vessels or aircraft of war of the Chinese People's Liberation Army or of foreign vessels or aircraft of war, or with their freedom to proceed whenever the officer in command may deem such course requisite.

15. Amendment of Schedules

The Director may by notice published in the Gazette amend Schedules 1 and 2.

PART 6

REPEALS, SAVINGS AND CONSEQUENTIAL AMENDMENTS

16. Repeals

(1) The Quarantine and Prevention of Disease Ordinance (Cap. 141) is repealed.

(2) The Prevention of the Spread of Infectious Diseases Regulations (Cap. 141 sub. leg. B) are repealed.

(3) The Quarantine (Measures on Departure) Regulations (Cap. 141 sub. leg. C) are repealed.

(4) The Quarantine and Prevention of Disease (Scale of Charges) Regulations (Cap. 141 sub. leg. D) are repealed.

(5) The Quarantine and Prevention of Disease Ordinance (Declaration under section 2(1)) Notice 1998 (Cap. 141 sub. leg. E) is repealed.

(6) The Quarantine and Prevention of Disease Ordinance (Sanitary Aerodrome) Declaration 1998 (Cap. 141 sub. leg. F) is repealed.

17. Saving of regulations

The Boats and Wharves (Supply of Water) Regulations (Cap. 141 sub. leg. A) –

- (a) shall, notwithstanding the repeal under section 16(1), continue in operation; and
- (b) shall be deemed for all purposes to have been made by the Secretary for Food and Health under section 7.

18. Consequential amendments

(1) Section 46(3) of the Public Health and Municipal Services Ordinance (Cap. 132) is amended by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(2) Section 2(2) of the Public Health (Animals and Birds) Ordinance (Cap. 139) is amended by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(3) Section 19(1) of the Midwives Registration Ordinance (Cap. 162) is amended –

- (a) by adding “scheduled” before “infectious disease”;
- (b) by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(4) Section 25(1) of the Nurses Registration Ordinance (Cap. 164) is amended –

- (a) by adding “scheduled” before “infectious disease”;
- (b) by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(5) Regulation 4(1)(b)(v) of the Nurses (Registration and Disciplinary Procedure) Regulations (Cap. 164 sub. leg. A) is amended –

- (a) by adding “scheduled” before “infectious disease”;

(b) by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(6) Regulation 4(1)(b)(v) of the Enrolled Nurses (Enrolment and Disciplinary Procedure) Regulations (Cap. 164 sub. leg. B) is amended –

(a) by adding “scheduled” before “infectious disease”;

(b) by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(7) Regulation 41 of the Child Care Services Regulations (Cap. 243 sub. leg. A) is amended –

(a) in the heading, by repealing “**Infectious diseases**” and substituting “**Scheduled infectious diseases**”;

(b) in paragraph (1) –

(i) by repealing “any infectious disease” and substituting “any scheduled infectious disease”;

(ii) by repealing “an infectious disease” and substituting “a scheduled infectious disease”;

(c) in paragraph (2), by repealing “infectious disease” where it twice appears and substituting “scheduled infectious disease”;

(d) in paragraph (3) –

(i) by repealing ““infectious disease” (傳染病)” and substituting ““scheduled infectious disease” (表列傳染病)”;

(ii) by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

- (8) The Education Regulations (Cap. 279 sub. leg. A) is amended –
- (a) in regulation 2 –
 - (i) by repealing the definition of “infectious disease”;
 - (ii) by adding –
 - ““scheduled infectious disease” (表列傳染病) has the same meaning as in the Prevention and Control of Disease Ordinance (of 2007);”;
 - (b) in regulation 53 –
 - (i) in the heading, by repealing “**Infectious diseases**” and substituting “**Scheduled infectious diseases**”;
 - (ii) in paragraph (1) –
 - (A) by repealing “any infectious disease” and substituting “any scheduled infectious disease”;
 - (B) by repealing “an infectious disease” and substituting “a scheduled infectious disease”;
 - (iii) in paragraph (2), by repealing “infectious disease” where it twice appears and substituting “scheduled infectious disease”.

(9) Regulation 41(2)(i) of the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) is amended by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(10) The Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) is amended –

- (a) in section 2 –
 - (i) by repealing the definition of “infectious disease”;

(ii) in the English text, in the definition of “particulars of identity”, by repealing the full stop and substituting a semicolon;

(iii) by adding –

““scheduled infectious disease” (表列傳染病) has the same meaning as in the Prevention and Control of Disease Ordinance (of 2007).”;

(b) in section 18 –

(i) in the heading, by repealing “**infectious disease**” and substituting “**scheduled infectious disease**”;

(ii) by repealing “infectious disease” where it twice appears and substituting “scheduled infectious disease”.

(11) Section 61(3)(a) of the Disability Discrimination Ordinance (Cap. 487) is repealed and the following substituted –

“(a) any scheduled infectious disease, or a disease caused by a scheduled infectious agent, within the meaning of the Prevention and Control of Disease Ordinance (of 2007); and”.

(12) Section 22(2)(i) of the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) is amended by repealing “Quarantine and Prevention of Disease Ordinance (Cap. 141)” and substituting “Prevention and Control of Disease Ordinance (of 2007)”.

(13) Section 1(c) of Schedule 2 to the Shenzhen Bay Port Hong Kong Port Area Ordinance (4 of 2007) is repealed and the following substituted –

“(c) an order made under the Prevention and Control of Disease Ordinance (of 2007) or its regulations prohibiting a person from leaving Hong Kong without the permission of a health officer;”.

SCHEDULE 1

[ss. 2 & 15]

SCHEDULED INFECTIOUS DISEASES

1. Acute poliomyelitis (急性脊髓灰質炎 (小兒麻痺))
2. Amoebic dysentery (阿米巴痢疾)
3. Anthrax (炭疽)
4. Bacillary dysentery (桿菌痢疾)
5. Botulism (肉毒中毒)
6. Chickenpox (水痘)
7. Cholera (霍亂)
8. Community-associated methicillin-resistant *Staphylococcus aureus* infection (社區型耐甲氧西林金黃葡萄球菌感染)
9. Creutzfeldt-Jakob disease (克雅二氏症)
10. Dengue fever (登革熱)
11. Diphtheria (白喉)
12. *Escherichia coli* O157:H7 infection (大腸桿菌 O157:H7 感染)
13. Food poisoning (食物中毒)
14. *Haemophilus influenzae* type b infection (invasive) (乙型流感嗜血桿菌感染 (侵入性))
15. Hantavirus infection (漢坦病毒感染)
16. Influenza A (H2), Influenza A (H5), Influenza A (H7), Influenza A (H9) (甲型流行性感冒 (H2)、甲型流行性感冒(H5)、甲型流行性感冒 (H7)、甲型流行性感冒 (H9))
17. Japanese encephalitis (日本腦炎)
18. Legionnaires' disease (退伍軍人病)
19. Leprosy (麻風)

20. Leptospirosis (鈎端螺旋體病)
21. Listeriosis (李斯特菌病)
22. Malaria (瘧疾)
23. Measles (麻疹)
24. Meningococcal infection (invasive) (腦膜炎雙球菌感染 (侵入性))
25. Mumps (流行性腮腺炎)
26. Paratyphoid fever (副傷寒)
27. Plague (鼠疫)
28. Psittacosis (鸚鵡熱)
29. Q fever (寇熱)
30. Rabies (狂犬病)
31. Relapsing fever (回歸熱)
32. Rubella and congenital rubella syndrome (風疹 (德國麻疹) 及先天性風疹綜合症)
33. Scarlet fever (猩紅熱)
34. Severe Acute Respiratory Syndrome (嚴重急性呼吸系統綜合症)
35. Smallpox (天花)
36. *Streptococcus suis* infection (豬鏈球菌感染)
37. Tetanus (破傷風)
38. Tuberculosis (結核病)
39. Typhoid fever (傷寒)
40. Typhus and other rickettsial diseases (斑疹傷寒及其他立克次體病)
41. Viral haemorrhagic fever (病毒性出血熱)
42. Viral hepatitis (病毒性肝炎)
43. West Nile Virus Infection (西尼羅河病毒感染)

- 44. Whooping cough (百日咳)
- 45. Yellow fever (黃熱病)

SCHEDULE 2

[ss. 2 & 15]

SCHEDULED INFECTIOUS AGENTS

- 1. *Bacillus anthracis* (炭疽芽胞桿菌)
- 2. *Clostridium botulinum* (肉毒桿菌)
- 3. Crimean-Congo haemorrhagic fever virus (克里米亞 – 剛果出血熱病毒)
- 4. Dengue virus (登革病毒)
- 5. Ebola virus (埃博拉病毒)
- 6. *Francisella tularensis* (土拉桿菌)
- 7. Guanarito virus (瓜納瑞托病毒)
- 8. Hantavirus (漢坦病毒)
- 9. Hendra virus (亨德拉病毒)
- 10. Herpes simiae virus (B virus) (猴疱疹病毒 (B 病毒))
- 11. Influenza virus type A (subtype H2, H5 and H7) (甲型流行性感
冒病毒 (H2、H5 及 H7 亞型))
- 12. Japanese encephalitis virus (日本腦炎病毒)
- 13. Junin virus (鳩寧病毒)
- 14. Kyasanur Forest disease virus (基薩諾爾森林病病毒)
- 15. Lassa virus (拉沙病毒)
- 16. Machupo virus (馬秋波病毒)
- 17. Marburg virus (馬爾堡病毒)
- 18. Monkeypox virus (猴痘病毒)

19. *Mycobacterium tuberculosis (multidrug-resistant)* (結核分枝桿菌
(耐多藥))
20. Nipah virus (尼巴病毒)
21. Omsk haemorrhagic fever virus (鄂木斯克出血熱病毒)
22. Polio virus (wild) (脊髓灰質炎病毒 (野毒株))
23. Rabies or rabies-related virus (狂犬病毒或類狂犬病毒)
24. Rift Valley fever virus (立夫特谷熱病毒)
25. Sabia virus (薩比亞病毒)
26. Severe Acute Respiratory Syndrome - coronavirus (嚴重急性呼吸
系統綜合症 – 冠狀病毒)
27. Tick-borne encephalitis virus (蜱傳腦炎病毒)
28. Variola virus (天花病毒)
29. West Nile virus (西尼羅河病毒)
30. Yellow fever virus (黃熱病毒)
31. *Yersinia pestis* (鼠疫耶爾森菌)

Explanatory Memorandum

The object of this Bill is to replace the Quarantine and Prevention of Disease Ordinance (Cap. 141) (“the Ordinance”) by a new Ordinance that is designed to bring the legislative basis for measures to control and prevent disease up-to-date and into line with the requirements of the International Health Regulations (2005).

2. The Bill is divided into 6 Parts.

Part 1 of the Bill contains the preliminary matters

3. Clause 1 provides for the short title and commencement.
4. Clause 2 provides for the definitions of the terms used in the Bill.

Part 2 of the Bill contains provisions relating to the seizure and forfeiture of articles

5. Clause 3 provides that a health officer may, with the approval in writing of the Director of Health (“the Director”) and for the purpose of the control or preventing the spread of any disease that poses a public health risk, seize any article that the health officer has reason to believe is an infectious agent or contains an infectious agent.

6. Clause 4 provides that a health officer may forfeit any article that is taken into Hong Kong illegally.

Part 3 of the Bill contains provisions relating to the powers of arrest

7. Clause 5 provides for the power of a health officer, etc. to stop, detain and arrest a person who has committed or is committing an offence under the Bill or who has obstructed or assisted in the obstruction of the health officer, etc. in the performance of statutory functions.

8. Clause 6 provides for the power to arrest a person who escapes from detention.

Part 4 of the Bill contains provisions relating to the power to make regulation

9. Clause 7 empowers the Secretary for Food and Health to make regulation for the purpose of the prevention of any disease and the spread of any disease and contamination.

10. Clause 8 empowers the Chief Executive in Council to make public health emergency regulation for the purposes of preventing, combating or alleviating the effects of a public health emergency and protecting public health.

11. Clause 9 empowers the Director to prescribe by an order published in the Gazette any measure to be applied in the light of any temporary recommendation made by the World Health Organization.

Part 5 of the Bill contains miscellaneous matters

12. Clause 10 requires the Commissioner of Police to furnish police assistance on the request of a health officer.

13. Clause 11 provides for the offence of obstructing or assisting in the obstruction of a health officer, etc. in the performance of statutory functions.

14. Clause 12 provides that the Director may order just and equitable compensation to be paid for any article that is damaged, destroyed, seized, surrendered or is submitted to any person pursuant to statutory authority.

15. Clause 13 provides for the immunity from any personal liability in respect of anything done or omitted to be done by a health officer or any public officer or persons acting under the direction of the health officer.

16. Clause 14 provides that the Bill does not affect vessels or aircraft of war.

17. Clause 15 empowers the Director to amend Schedules 1 and 2 of the Bill by way of a notice published in the Gazette.

Part 6 of the Bill contains provisions repealing the Ordinance and provides for the savings and consequential provisions

18. Clause 16 repeals the Ordinance and its regulations.

19. Clause 17 continues in force the Boats and Wharves (Supply of Water) Regulations (Cap. 141 sub. leg. A) despite the repeal of the Ordinance.

20. Clause 18 contains consequential amendments to other Ordinances.

21. Schedule 1 contains the scheduled infectious diseases that are to be controlled by the Bill.

22. Schedule 2 contains the scheduled infectious agents that are to be controlled by the Bill.

**Major Deletion and Addition of Powers under the
Proposed Prevention and Control of Disease Bill as compared to
the existing Quarantine and Prevention of Disease Ordinance (Cap. 141)**

MAJOR DELETIONS	
Provisions in existing Ordinance	New provisions in the Bill / Remarks
1. Section 8 – Regulation making power rests with the CE in Council	Clause 7 – Regulation making power rests with SFH
2. Sections 3 to 6, 19 to 40, 43 to 45, and 69 to 71 – Provides the following powers/ requirements relating to general measures against diseases, especially in respect of vessels and aircraft <ul style="list-style-type: none"> ● power to put contacts under surveillance and isolation ● power to conduct medical examination on person from infected place or port ● power to inspect vessel and aircraft ● power to require information from vessel/ aircraft operator ● requirement for notification of disease by vessel and aircraft ● power to restrict landing or departure of vessels and aircraft ● power to restrict movements of persons or things from infected vessels or aircraft ● power to require operator of vessel or aircraft to maintain the vessel or aircraft in sanitary conditions 	Similar powers will not be included in the Bill. They will be provided in the proposed new Prevention and Control of Disease Regulation, updated and expanded to reflect, <i>inter alia</i> , the requirements of the IHR(2005). In particular, the scope of disease coverage will be expanded (instead of limiting to the three quarantinable disease, i.e. cholera, plague and yellow fever) and the powers will be applicable to scheduled infectious diseases, diseases caused by scheduled infectious agents and contamination (in some cases). The power of inspection and other relevant powers will be extended to points of entry and to other cross-boundary conveyances, e.g. coaches and trucks (in addition to aircraft and vessels).

MAJOR DELETIONS	
Provisions in existing Ordinance	New provisions in the Bill / Remarks
<ul style="list-style-type: none"> • power to order disinfection of vessel or aircraft • power to dispose of infectious corpse 	
<p>3. Section 47 to 68 – Precautionary measures against the three quarantinable diseases (cholera, plague and yellow fever)</p>	<p>The scope of disease coverage under the IHR(2005) has been broadened from the three quarantinable diseases to any disease of public health concern that can spread internationally. The Bill provides general powers to deal with an expanded scope of diseases.</p>

MAJOR ADDITIONS	
Proposed provisions in the Bill	Remarks
1. Clause 3 of Bill – empowers a health officer, with the written approval of the Director, to seize any article that he has reason to believe is or contains an infectious agent.	To enable the swift seizure of the article concerned before or during an outbreak to facilitate the Department of Health to identify and implement suitable measures to control the disease as soon as possible.
2. Clause 8 of Bill – empowers the CE in Council to make regulations relating to public health emergency.	Decisions relating to public health emergency would all be vested in the CE in Council.
3. Clause 9 of Bill – empowers the Director to prescribe measures to prevent the introduction into, spread in or transmission out of Hong Kong of diseases in light of temporary recommendations issued by the WHO.	The measures will be prescribed having regard to temporary recommendations made by the WHO. By contrast, standing recommendations of WHO will, if necessary, be implemented by legislative amendments in future.

Implications of the Proposals

Economic Implications

The 2003 SARS experience highlighted the vulnerability of economic growth to outbreaks of infectious diseases. Such outbreaks not only represent a threat to public health locally but would also threaten the global economy amidst globalization, and Hong Kong's status as a world city. The proposals in the Bill should better strengthen the local regulatory regime for preventing and controlling the spread of diseases, hence providing better protection for public health and the economy.

2. As the points of entry and cross-boundary conveyances in Hong Kong have in general good hygiene standards, we envisage that the proposed Bill should have minimal impact on their operations under normal circumstances and business will by and large be as usual. However, during outbreaks or emergencies, additional work may be required of them to protect public health. Noting the principle of the IHR (2005) that unnecessary interference with international traffic and trade is to be avoided, given the importance of maintaining smooth international passenger and cargo traffic for Hong Kong, the disruption to trade and traffic when implementing measures to protect public health should be minimal.

Financial and Civil Service Implications

3. For the implementation of the requirements of IHR (2005) and the enforcement of the port health related measures to prevent the cross-boundary spread of infectious diseases and diseases caused by contamination, an additional expenditure of \$12.6 million will be incurred per annum. A team of 16 civil servants, namely five Medical and Health Officers, one Senior Health Inspector, five Health Inspectors, one Nursing Officer and four Registered Nurses, will be deployed to conduct inspections of cross-boundary conveyances and points of entry; conduct assessment of cases of infectious diseases and contamination on board cross-boundary conveyances or at points of entry; liaise with WHO and the Central People's Government/ Ministry of Health;

implement health and disease control measures recommended by WHO; apply entry and exit controls; and provide relevant training and guidance to operators of points of entry or cross-boundary conveyances. Sufficient resources to meet the above requirements have been included in the 2007-08 Estimates.

4. For the new provisions relating to the local control of infectious diseases, the Department of Health will be responsible for their implementation and the Department will meet the expenditure from its existing resources.

5. Article 105 of the Basic Law requires compensation corresponding to the real value of the property concerned to be paid in cases of lawful deprivation of private properties. It is not possible to estimate at this stage the amount of compensation which may have to be paid to property owners whose property is requisitioned by the Government during a public health emergency. Such requisition may be necessary when the Government, for instance, does not possess the subject properties and needs urgent access to them to contain the situation. Examples include the requisition of vaccines and medicine. The overall financial implications for the Government will depend on factors such as the magnitude of the public health emergency, and the value and nature of the property (e.g. whether they would be consumed on use or whether they could be returned). The Bill also provides that the Director may order to provide compensation to articles being damaged, destroyed, seized, surrendered or submitted pursuant to the Bill. As such, the financial impact of such compensation is difficult to estimate at this stage. Yet, we consider that an occasion giving rise to such a need will be relatively rare and the commitment is likely to be one-off in nature. In the event of a state of public health emergency, we would provide our assessment on the amount of compensation required when the properties to be requisitioned are known. Where necessary, we may seek additional resources in line with the established procedures.

Sustainability Implications

6. In line with the sustainability principle of pursuing policies which promote and protect the physical health of the people of Hong Kong, the proposals in the Bill will strengthen the Government's capability to prevent and control the spread of diseases in Hong Kong.