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

Purpose

This paper reports on the deliberations of the Bills Committee on the Prevention and Control of Disease Bill (the Bill).

Background

2. The Quarantine and Prevention of Disease Ordinance (Cap. 141) (QPDO) and its subsidiary legislation provide the legislative framework for the prevention and control of infectious diseases of public health importance in Hong Kong. The QPDO was first enacted in 1936 by amending and consolidating the relevant laws relating to the prevention and control of infectious diseases, taking into account the principles stipulated in the International Sanitary Convention (1926) (subsequently replaced by the International Health Regulations (IHR) (1969) of the World Health Organization (WHO)). The QPDO was amended subsequently to reflect various amendments to the IHR (1969).

3. The IHR (2005) of 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 IHR (2005) are a set of legal regulations for WHO Member States (China being of them) in relation to global response to public health threats. Pursuant to Article 153 of the Basic Law (BL), compliance with IHR (2005) extends to Hong Kong.

The Bill

4. The object of the Bill is to replace QPDO 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 IHR (2005). The Bill contains fundamental and enabling provisions, such as those providing for the health officers' power of seizure, forfeiture and arrest, the making of regulations by the Secretary for Food and Health (SFH) and the Chief Executive (CE) in Council, the power of the Director of Health to prescribe measures to be applied in the light of any temporary recommendation made by WHO pursuant to IHR (2005), 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 the Prevention and Control of Disease Regulation (the PCD Regulation) which will be made by SFH under clause 7 of the Bill after its enactment.

5. After the enactment of the Bill, most of the subsidiary legislation of QPDO will be repealed or will be modernised and subsumed under the new PCD Regulation. The new Prevention and Control of Disease Ordinance and the PCD Regulation will commence on the same date to be appointed by SFH.

6. The main provisions of the Bill are -

Power of seizure, forfeiture and arrest

- (a) Clause 3 provides that a health officer may, with the approval in writing of the Director of Health 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;
- (b) Clause 4 provides that a health officer may forfeit any article that is taken into Hong Kong illegally;
- (c) Clause 5 provides for the power of a health officer, etc. to stop, detain or 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;
- (d) Clause 6 provides for the power to arrest a person who escapes from detention;

Power to make subsidiary legislation

- (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 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, in particular the requisitioning of property and matters relating to compensation for such requisitioning;

- (g) Clause 9 empowers the Director of Health to prescribe by an order published in the Gazette any measure to be applied in the light of any temporary recommendation made by WHO;

Miscellaneous matters and consequential amendments

- (h) Clause 10 requires the Commissioner of Police to furnish police assistance on the request of a health officer;
- (i) Clause 11 provides for the offence of obstructing or assisting in the obstruction of a health officer, etc. in the performance of statutory duties;
- (j) Clause 12 provides that the Director of Health 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 in good faith by a health officer or any public officer or persons acting under the direction of the health officer;
- (l) Clause 14 provides that the Bill does not affect the internal management of vessels or aircraft of war of the Chinese People's Liberation Army or of foreign vessels or aircraft of war, or their freedom of movement;
- (m) Clause 15 empowers the Director of Health to amend Schedules 1 and 2 to the Bill by way of a notice published in the Gazette;
- (n) Clauses 16 and 17 repeal the QPDO and its subsidiary legislation except for the Boats and Wharves (Supply of Water) Regulation (Cap. 141 sub. leg. A);
- (o) Clause 18 makes consequential amendments to other ordinances;

Specification of infectious diseases and infectious agents

- (p) Schedule 1 provides for a list of 45 infectious diseases that are to be controlled by the Bill; and

- (q) Schedule 2 provides for a list of 31 infectious agents that are to be controlled by the Bill.

7. All the powers in the Bill and the PCD Regulation can be exercised both in peacetime and during a state of public health emergency for the prevention and control of disease, except for the power of CE in Council to make the Public Health Emergency Regulation (the PHE Regulation) under clause 8 of the Bill, which is exercisable only on an occasion of a public health emergency. A state of "public health emergency" is defined under clause 8(4) of the Bill to mean -

- "(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."

The Bills Committee

8. At the House Committee meeting on 4 January 2008, Members formed a Bills Committee to study the Bill. Hon Vincent FANG Kang and Dr Hon Joseph LEE Kok-long were elected Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

9. The Bills Committee has held 10 meetings, including nine meetings with the Administration, and has received views on the Bill from the Hong Kong Bar Association and the Law Society of Hong Kong.

Deliberations of the Bills Committee

Compliance of the Bill with BL 6 and 105

10. Some of the measures provided in the Bill, such as seizure and surrender of articles, and requisition of private property, for the purpose of preventing and controlling the spread of diseases may be considered as interference with or, in some cases, deprivation of property rights. Private property rights in Hong Kong are protected by -

- (a) BL 6 which provides that "the Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law"; and
- (b) BL 105 which provides that "the Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay. The ownership of enterprises and the investments from outside the Region shall be protected by law."

11. To ensure compliance with BL 105, the fair balance or proportionality requirement which may be implicit under BL 6 and 105 (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 realised), and compliance with the requirements under applicable international agreements for compensation to be paid, the Bill proposes to -

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

Compensation under the Bill

Compensation schemes

12. Clause 12(1) of the Bill provides that the Director of Health may order the payment of such compensation as is just and equitable in the circumstances where any article is damaged, seized, surrendered or is submitted to any person under statutory authority. Clause 12(3) further provides that such compensation does not apply to compensation which is provided for by regulations made under clause 8.

13. Clause 8 of the Bill provides that CE in Council may make regulations on an occasion of a public health emergency as defined in clause 8(4). Clause 8(2)(c) further provides that the regulation may provide for the requisitioning of property and matters relating to compensation for such requisition.

14. Compensation for requisition of properties can only be made during a state of public health emergency, as such requisition will only be exercised during a state of public health emergency with the making of the PHE Regulation under clause 8 of the Bill. On the other hand, compensation under clause 12 can be made in both peacetime and during a state of public health emergency. Clause 12 covers a much broader scope of circumstances (covering where any article is damaged, seized, surrendered or is submitted to any person pursuant to the Ordinance), except for requisition of properties. These circumstances may arise as a result of health officers exercising their powers under the Bill in both peacetime and during a public health emergency.

15. There will not be a cap on the amount of compensation. Each compensation claim will be assessed according to its own merits.

Considerations relevant to compensation claims

16. The Administration has advised that just and equitable compensation is provided under clause 12 of the Bill to ensure compliance with the real value compensation requirement in deprivation cases under BL 105 and the fair or proportionality requirement which may be implicit under BL 6 and 105. The measure of compensation will be guided by the principles of determining the "real value" as decided by local courts. In cases of mere interference with property rights, it is arguable that the "fair balance test" developed under the European jurisdiction would apply as an implicit requirement under BL 6 and 105, although there are not yet any local court decisions embracing this test in relation to such non-deprivation cases. Under this test, any interference with property rights would need to strike a fair balance between the demands of the general interest of the society (which any interference with property rights must aim to serve) and the requirements of the protection of the individual's rights. There must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Examples of deprivation of properties in the context of the Bill include permanent requisition of medicine, vaccines, personal protective gears, etc. during a public health emergency; destruction of an infected article by health officers for the purpose of preventing the spread of infectious disease, etc. Examples of interference with property rights include temporary requisition of a private building as a place used for isolation/quarantine purpose; temporary requisition of a private vehicle for transporting healthcare personnel and supplies during a public health emergency, etc.

17. At the suggestion of members to provide for a detailed compensation scheme for requisition of properties under the PHE Regulation, the Administration has undertaken to provide in the PHE Regulation that any person who sustains loss or damage in consequence of or arising out of the exercise of any requisition power, or is entitled to the use of or rent from any requisitioned property, is entitled to recover such compensation as is just and equitable in the circumstances.

18. Although the Director of Health may order the payment of compensation as is just and equitable under clause 12(1) of the Bill and the PHE Regulation, his decision of making such an order is still subject to judicial scrutiny according to the principles of administrative law. In other words, 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.

19. The Administration has provided the following examples of circumstances in which compensation is unlikely to be provided under clause 12 of the Bill or the PHE Regulation to be made under clause 8 -

- (a) seizure or destruction of an infected article that has no economic value and poses a public health risk;
- (b) the loss suffered was caused by some action or inaction of the person making the compensation claim; and
- (c) the relevant interference with property rights meets the fair balance test without payment of compensation, for instance, a health officer, for a very short period of time, say of only a few minutes, seizing an article that is brought into a place placed under isolation without the requisite permission; or where the seized article being the cause of a public health emergency.

20. The above examples go to illustrate that the following considerations are likely to be relevant to consideration of a compensation claim under clause 12 of the Bill and the PHE Regulation to be made under clause 8 -

- (a) the context of the Government's act which results in deprivation/interference;
- (b) whether there is a causal connection between the deprivation/interference and the loss in question;
- (c) the fault or care of the claimant, particularly whether he has contributed to the loss in question; and
- (d) the extent of impact of the deprivation/interference on the claimant's property rights.

21. Members are of the view that it would be desirable if the considerations for providing compensation, as has been done in some overseas jurisdictions, could be spelt out in clause 12 of the Bill and the PHE Regulation. In addition, members have requested the Administration to consider the views expressed by the two legal professional bodies in this regard. The Law Society of Hong Kong points

out that the compensation schemes under the Bill and the PHE Regulation are not satisfactory, as they provide little guidance as to how compensation is to be assessed. Although the court will likely decide what is "just and equitable" according to common law and constitutional principles, without more concrete guiding principles for consideration of a compensation claim, claimants will have great difficulties in understanding their rights to compensation or argue their case in case of dispute. The Hong Kong Bar Association also considers that a framework for the reckoning and determination of compensation for requisitioning of property should be set out in the PHE Regulation.

22. The Administration does not see the case as there is already a constitutional requirement under BL 105 for real value compensation to owners of deprived properties in deprivation cases and the "fair balance test" for determining cases of interference with property rights which may be implicit under BL 6 and 105. Providing "just and equitable" compensation under clause 12 of the Bill and in the PHE Regulation is appropriate to embrace all types of claims for compensation and to provide flexibility in accommodating any future local court decisions on deprivation as well as non-deprivation cases. The Administration has also pointed out that there are precedents in Hong Kong's statute book which provides for compensation by the Government without spelling out in detail the considerations for determining the compensation to be provided.

Mechanism for resolving disputes over compensation claims

23. Clause 12(2) of the Bill provides that 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). A provision similar to clause 12(2) will also be included in the PHE Regulation.

24. The Administration has advised that clause 12(2) of the Bill merely continues the use of arbitration provided under section 17 of QPDO to resolve disputes over compensation claims in the new legislative framework for prevention and control of disease. Furthermore, different from section 17 of QPDO which 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 Cap. 341, clause 12(2) 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.

25. Members note that both the Hong Kong Bar Association and the Law Society of Hong Kong consider clause 12(2) of the Bill unsatisfactory. The Bar Association points out that clause 12(2) does not mandate arbitration in default of

agreement, i.e. the Director of Health may refuse to agree to submit the dispute to arbitration, thereby leaving the person aggrieved with recourse to an application for judicial review of the legality of the Director's order. The Bar Association therefore suggests that the Bill should provide for both options of arbitration and judicial determination for resolving disputes over compensation claims or the establishment of a compensation tribunal whose determination is subject to appeal to a court.

26. On the other hand, the Law Society is of the view that clause 12(2) of the Bill should be deleted since arbitration is subject to agreement by both parties and it is unclear why a voluntary process can have statutory force. In fact, the reference to arbitration may arise from the agreement of the parties or from statute. Without clause 12(2), a compensation dispute over an order made by the Director of Health under clause 12(1) cannot be referred to arbitration under the Arbitration Ordinance unless the parties agree to enter into an ad hoc arbitration agreement to that effect.

27. Having regard to the views of the two legal professional bodies over the mechanism for resolving disputes over compensation claims, members have requested the Administration to discuss with these two professional bodies over the issue.

28. The Administration subsequently met with the two legal professional bodies on 30 April 2008 to discuss the dispute resolution mechanism provided under clause 12(2) of the Bill. It has explained that the policy intent of clause 12(2) is to provide flexibility to the claimant as to the mode of dispute resolution, say, by arbitration or court proceedings. To address the concerns expressed in their submissions, the Administration has proposed to amend clause 12(2) to the effect that the Director of Health will not refuse to submit the dispute to arbitration if the claimant chooses to resolve the dispute by arbitration. According to the Administration, representatives of the Hong Kong Bar Association and the Law Society of Hong Kong have no objection to the proposal, so long as the provision indicates clearly the options that are available to the claimant. These representatives also note the explanation, as mentioned in paragraph 22 above, for not setting out in the Bill the factors to be considered by the Director to determine "just and equitable" compensation, and for not setting up a compensation tribunal for hearing dispute cases over the compensation ordered by the Director of Health given the intended flexibility afforded to claimants to resolve disputes on compensation claims by the mode that they see fit. Based on the outcome of the discussion, and taking into account the views of the Bills Committee, the Administration will amend clause 12 as follows -

"(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) The Director shall serve an order made under subsection (1) on the person in respect of whom it is made, either personally or by post, within 7 days after the order is made.
- (3) Any dispute arising from an order made under subsection (1) on the question whether compensation is payable or the amount of compensation shall, in the absence of agreement, be resolved or determined according to this section.
- (4) The dispute shall be resolved or determined by arbitration under the Arbitration Ordinance (Cap. 341) if the party disputing the Director's order ("the claimant"), within 6 months after the Director makes the order, serves a notice on the Director notifying the Director that the dispute will be referred to arbitration and proceeds to arbitration in accordance with the Arbitration Ordinance (Cap. 341).
- (5) Instead of proceeding to arbitration in accordance with the Arbitration Ordinance (Cap. 341) pursuant to subsection (4), the claimant may, within 6 months after the Director makes the order, institute civil proceedings for the determination of the dispute.
- (6) Subsection (1) does not apply to cases for which compensation is provided for by regulations made under section 8."

29. Proposed amendments to clause 12 concerning the dispute resolution mechanism and the mode of serving of notice on the amount of compensation by the Director of Health on the claimant will be incorporated in the PHE Regulation.

Financial loss suffered by people isolated/quarantined

30. Members have asked whether compensation would be paid to cover financial loss suffered by owners of premises or conveyances ordered to be isolated, as well as people ordered to be isolated or quarantined.

31. The Administration has advised that no compensation will be provided for such loss since the relevant isolation or quarantine orders will only last for a short period of time to enable the health authority to carry out disease control measures and/or medical surveillance to prevent the spread of disease. It is unlikely that the premises and conveyances under isolation or affected by the quarantine are suitable for usual economic use, such as carrying out business activities, because of, for instance, their being infected and/or the presence of persons detained under isolation or quarantine. In view of these considerations and the importance of the public interest which such isolation or quarantine orders serve to advance, the Administration considers that, notwithstanding the absence of compensation for

such financial loss, any interference with property rights arising from the making of these isolation or quarantine orders meets the fair balance required referred to in paragraph 16 above.

32. The Administration has further advised that under the current human rights law, the Government is also not obliged to provide compensation to a person who is lawfully detained for the prevention of the spreading of infectious diseases for any financial loss incurred by him as a result of the lawful detention. Under Article 5(5) of the Hong Kong Bill of Rights, only a person who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Any person who claims that he has been subjected to arbitrary detention in violation of Article 5(1) of the Hong Kong Bill of Rights may apply to the court under section 6 of the Hong Kong Bill of Rights Ordinance (Cap. 383) for such remedy or relief as the court considers appropriate and just in the circumstances.

33. The Administration has, however, pointed out that in the case of a public health emergency where large number of people may be affected, the fact that the Government is not liable for their financial loss does not preclude the introduction of relief measures on compassionate ground. A recent example is the Trust Fund set up after the SARS outbreak in 2003 to provide special ex-gratia relief payment or financial assistance.

The PHE Regulation

General framework of the PHE Regulation

34. A general framework of the PHE Regulation that might be made by CE in Council under clause 8 of the Bill where there is a public health emergency situation as defined in clause 8(4) of the Bill is in **Appendix II**.

Authority to make the PHE Regulation

35. Dr Hon KWOK Ka-ki has asked for the reason why the Director of Health is not specified in the Bill for the making of the PHE regulation, as has been done in the United States of America.

36. The Administration has explained that the reason for only empowering CE in Council to make a public health emergency regulation on an occasion of public health emergency is because the whole Government will need to be mobilised to combat and control the emergency situation to which the Government will be held wholly accountable. Although the Director of Health is not mentioned in the making of a public health emergency regulation under clause 8 of the Bill, CE in Council will certainly seek the professional advice of the Director before deciding on making the regulation.

Making and repealing the PHE Regulation

37. Hon Audrey EU is of the view that, given the exceptional powers provided to the Government under the PHE Regulation, such as the requisitioning of property, the Regulation should be subject to scrutiny by the Legislative Council (LegCo) before implementation. Alternatively, a separate statutory declaration of public health emergency by CE in Council should be made to inform the public of the emergency situation.

38. The Administration has emphasised that it is of paramount importance to give the Government the necessary powers to control a public health emergency without delay. The negative vetting procedure would allow the PHE Regulation to come into operation on the date of publication in the Gazette to trigger the machinery for handling an emergency situation that threatens the public health, and at the same time allow LegCo to scrutinise it. Such an arrangement is in line with the practice provided under the public health legislation of overseas jurisdictions such as Australia, Canada, Singapore and the United Kingdom. Under their legislation, the emergency declarations/orders/regulations come into operation as soon as they are made/signed, and are at the same time subject to scrutiny of the legislature. In the event of a public health emergency, the Administration will brief LegCo on the PHE Regulation after it has been made and provide LegCo with updates on its implementation until it is repealed by CE in Council.

39. While the Administration considers a separate statutory declaration of public health emergency by CE in Council not necessary, the CE in Council will still make a declaration when there is a public health emergency. The Government also has the duty to notify WHO about the public health emergency under IHR (2005) and the Government will make announcements to keep the public informed of the emergency situation.

40. Hon Margaret NG considers that, given the significant impact of making the PHE Regulation in Hong Kong, the end date of the state of public health emergency should be specified in the Regulation.

41. The Administration has advised that it is the Government's intention to continuously review the public health emergency situation and repeal the PHE Regulation by way of a notice published in the Gazette once the state of public health emergency has ceased. To reassure the public that the PHE Regulation will not remain in force longer than necessary, the Administration will provide in clause 8 of the Bill that CE in Council will review or cause to be reviewed the public health emergency situation from time to time, in line with section 72B(2) of the Patents Ordinance (Cap. 514).

Requisition of properties under the PHE Regulation

42. Members have asked whether the requisition of private properties under the PHE Regulation will include intellectual property, such as the patents of pharmaceutical products.

43. The Administration has advised that the PHE Regulation will not provide for the requisition of intellectual property protected by the Patents Ordinance. Part IX of the Patents Ordinance has already provided for the use of patents by the Government during a period of extreme urgency as declared by CE in Council under the Ordinance for maintaining or securing sufficient supplies and services essential to the life of community and the compensation for such Government use. The Patents (Amendment) Ordinance 2007, which has come into operation on 22 February 2008, further provides for, among other things, the granting of a compulsory import licence for patented pharmaceutical products and the related remuneration to the proprietor of the patent, if any, to import, put on the market, stock, use or otherwise the generic version of a patented pharmaceutical product, or perform any other act which would amount to an infringement of the patent concerned during a period of extreme urgency as declared by CE in Council under the Ordinance to address any public health problem. Unlike the general "Government use" as provided for in the current Part IX, the Amendment Ordinance does not restrict the use to Government, subject to the compulsory licence, and that no remuneration would need to be paid at the importing end if adequate remuneration has been paid to the proprietor of the patent at the exporting end.

Definition of "requisition"

44. Members share the view that as "requisition" is not a technical legal term, a definition for "requisition" should be provided in the Bill to better reflect the policy intent that the term embraces deprivation of property and mere interference with property rights. After consideration, the Administration will provide a definition of "requisition" by adding a new subclause (5) to clause 8 of the Bill to avoid doubt.

Requisitioning of properties in circumstances other than a public health emergency

45. Hon Andrew CHENG has suggested that the power to requisition private properties should be provided in an emergency situation which is less serious than a "public health emergency" as defined in clause 8(4) of the Bill so that the situation can be controlled as quickly as possible.

46. The Administration has advised that given the implications of requisition on property rights protected under BL 6 and 105, it is the Government's policy that the requisition power will only be exercised in a public health emergency situation

as defined under clause 8(4) of the Bill. Where an emergency situation falls short of a public health emergency situation, the Government will make use of its existing resources to handle the situation.

Powers of arrest under the Bill

47. Powers of arrest under the Bill are provided under the following provisions
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- (a) clause 6(1) empowers health officers, police officers, appointed public officers, staff of hospital or a place of isolation/quarantine and members of the Auxiliary Medical Service (AMS) or Civil Aid Service (CAS) to arrest a person who escapes from a place of isolation/quarantine (which is an offence under clause 6(2));
- (b) clause 5(1) gives the power of arrest without warrant to health officers and police officers if they reasonably suspect that a person has committed or is committing an offence under the Ordinance other than that under clause 6(2); and
- (c) clause 5(2) empowers all health officers, police officers, public officers and persons enforcing the legislation to arrest without warrant any person who obstructs or assist in obstructing their lawful exercise of power.

48. The Administration has explained that although health officers and police officers work closely together in enforcing the legislation, it is still necessary to give health officers the arrest power for effective prevention and control of infectious diseases in case there is no police officer at the scene. The Administration has pointed out that except for the particular case provided for under clause 6(1), the power to arrest a person who has committed or is committing an offence under clause 5(1) is only given to health officers and police officers. This reflects the policy that health officers and police officers are the main enforcement officers of the legislation, and that arrest power will be given only when absolutely required and fully justified.

49. The Administration has further explained that there is a need to also provide a wider scope of public officers/persons in addition to health officers and police officers with arrest power under clause 5(2), as the main intent of the clause is to prevent people from obstructing the exercise of powers under the Bill, including performance of isolation or quarantine function where members of AMS, CAS and hospital staff may be deployed to carry out or assist in carrying out such function. Similarly, there is also a need to give the power of arrest to a wider scope of public officers/persons in addition to health officers and police officers under clause 6(1). These people include those who may be deployed to manage the place of isolation/quarantine or the place where the person is detained, for instance, public

officers on duty at holiday camps used as a place of isolation/quarantine, members of AMS and CAS, and members of the Immigration Service (for arresting a person seeking to leave Hong Kong in contravention of a health officer's order at a point of entry), hospital staff etc. While these people are usually assisted by police officers, the Bill has to give them the power so that they can arrest a person placed under isolation/quarantine who is trying to escape from the place of isolation/quarantine before a police officer arrives.

50. While agreeing to the need for empowering a wider scope of public officers/persons in addition to health officers and police officers with arrest power under clause 5(2), Hon LI Fung-ying has expressed concern that conflict between employers and employees will arise as some employees may be reluctant to exercise the general arrest power given to them. Hon Vincent FANG has also pointed out that unlike members of AMS and CAS who wear uniform while on duty, hospital staff may not in all instances. This may impede the exercising of arrest by hospital staff provided under clause 5(2).

51. On review, the Administration will amend clauses 5(2) and 6(1) to provide for the power of arrest of health officers, police officers, public officers appointed under the Ordinance, for instance, Immigration Officer, and members of AMS and CAS only. Under the new proposal -

- (a) clause 5(1) will provide that a health officer or a police officer may arrest a person who has committed or is committing an offence under the Ordinance;
- (b) clause 5(2) will be amended to provide that a health officer, a police officer, an appointed public officer, or a member of AMS or CAS may arrest a person who obstructs, or assists in obstructing, the exercise of power under the Ordinance;
- (c) clause 6(1) will be amended to provide that an appointed public officer, a police officer, or a member of AMS or CAS may arrest a person who escapes from a place where he is detained and convey him to the place from which he escaped or any other place authorized by a health officer; and
- (d) hospital staff will be given the power to stop and detain a person who is committing or has committed an offence in relation to isolation or quarantine in the PCD Regulation to be made under clause 7 of the Bill. The Department of Health will work with the Hospital Authority to prepare operational guidelines on the exercise of the power by hospital staff.

Safeguards for the rights of persons arrested

52. Members are of the view that sufficient safeguards should be provided in the Bill to ensure that the rights of individuals would not be unduly compromised as a result of acts taken against them under clauses 5 and 6.

53. The Administration has advised that the rights of a person arrested by a person other than a police officer will be fully safeguarded. Under clause 5(3) of the Bill, the person will be delivered to a police officer as soon as practicable, who will then handle the person in accordance with established procedures, or handover the person to a health officer for medical examination or test under section C7 of the PCD Regulation in case the person is suspected to be infected.

54. The Administration has further advised that usual safeguards applicable to an arrested person, such as the right to be informed of the reason for arresting him, the right to trial or to release within a reasonable time, the right to take proceedings before a court, etc. will also be applicable to persons arrested under clauses 5 and 6. Suitable training will also be provided to public officers and persons authorised to exercise the power of arrest under the Bill to ensure that they understand the proper arrest procedures and the rights of the arrested persons.

Safeguards for the rights of persons placed under isolation/quarantine

55. In response to members' enquiries on the safeguards for the rights of person placed under isolation/quarantine, the Administration has advised that before placing a person under isolation/quarantine, a health officer must have reason to believe that the person has been infected with or is a contact of a specified infectious disease. The order made by a health officer to place the person under isolation/quarantine must be in writing and will specify both the reason for isolation/quarantine and the terms of isolation/quarantine. A health officer will make professional judgment having regard to the person's conditions, such as medical or contact history, clinical symptoms or signs, laboratory test results, etc. and discussions with the parties providing such information.

56. The Administration has further advised that a person placed under isolation/quarantine may request a medical examination or test to be performed by a medical practitioner of his choice, in addition to the examination or test to which a health officer subjects the person. The person will also be subject to regular medical examination or test in order to review his health conditions. The person will be released from isolation/quarantine as soon as a health officer considers that he is not infectious, for instance, when he has been 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 placed by medical surveillance, which is less restrictive than isolation/quarantine.

57. The Administration has also pointed out that a person aggrieved by the decision of a health officer can seek remedy through the court by applying for judicial review or a writ of *habeas corpus*, or bringing proceedings for a violation of his right to liberty and security of person pursuant to the Hong Kong Bill of Rights Ordinance.

Definition of "article"

58. Under clause 2 of the Bill, the term "article" 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."

59. Having regard to the context in which the term "article" is used in the Bill, the Administration agrees that it would be absurd to interpret the term as including human beings. The Administration will move an amendment to delete "(other than a human being)" from the definition of "article".

Definitions of "isolation" and "quarantine"

60. The Administration will move amendments to delete the definitions of "isolation" and "quarantine" under clause 2 of the Bill and provide the circumstances under which isolation and quarantine would be carried out in the PCD Regulation to be made under clause 7 of the Bill for clarity purpose.

Draft provisions of the PCD Regulation

61. The Bills Committee has scrutinised the draft provisions of the PCD Regulation provided by the Administration. Members generally find the draft PCD Regulation in order. The main issues raised by members are set out in the ensuing paragraphs.

Definition of "operator"

62. The draft PCD Regulation defines "operator", in relation to a conveyance, to mean its owner, charterer, master, pilot, commander or driver (as the case may be) or the person in charge of the conveyance or a person who is acting as an agent of the owner or the charterer or the person in charge of the conveyance.

63. Some members have raised the concern that the Chinese text of the term "operator" (“營運人”) may imply that the owner of the conveyance has the obligation to notify a health officer immediately if a person dies on a cross-boundary aircraft, cross-boundary vessel or cross boundary public vehicle which he owns, regardless of whether the pilot of the aircraft, the master of the vessel or the driver of the vehicle has notified the health officer under section F5 of the draft Regulation.

64. The Administration has advised that the meaning of “operator” has to be understood in the context of the individual section in which it appears, as signified by the phrase “as the case may be” in the definition. Normally, it is expected that the person who has direct knowledge of the matter concerned will notify the health officer. In the case of section F5, it is expected that the pilot of the aircraft, the master of the vessel or the driver of the vehicle will notify the health officer. However, so long as the health officer is notified by any person who falls under the definition of “operator”, the legal obligation will be considered as being discharged. The Administration has further advised that the Chinese text of the word “operator” is also “營運人” in a number of local legislation, for instance, the Travel Agents Ordinance (Cap. 218), the Airport Authority Ordinance (Cap. 483), the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582), etc.

Definition of "residential premises"

65. Under section C1(6) of the draft PCD Regulation, "residential premises" means a place or part of a place that is used wholly or principally for dwelling purposes and constitutes a household unit, but does not include the following -

- (a) a home for the aged, child care centre, convalescent centre or a similar establishment;
- (b) a point of entry;
- (c) a cross-boundary conveyance; and
- (d) a place of isolation or quarantine.

66. Hon Audrey EU has asked about the reason for including "constitutes a separate household unit" in the definition of "residential premises" in section C1(6).

67. The Administration has explained that in the drafting of the definition of “residential premises” (住用處所), reference was made to the definitions of this term (or similar terms) in other local legislation, such as -

(a) Section 38A of Immigration Ordinance (Cap. 115)

“Domestic premises” (住用處所) means premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit;

(b) Section 60A of Shipping and Port Control Ordinance (Cap. 313)

“Domestic premises” (住宅處所) means any premises used wholly or mainly for residential purposes and constituting a separate household unit; and

(c) Section 2 of Noise Control Ordinance (Cap. 400)

“Domestic premises” (住用處所) means -

- (a) any premises used wholly or mainly for residential purposes and constituting a separate household unit.

68. The Administration has further advised that the inclusion of “constitutes a separate household unit” in the definition of “residential premises” in section C1(6) will help identify the part of a premises used for both residential and non-residential, for instance, commercial purposes that requires a warrant for entry. The intention is that a warrant is required to enter the part of such a premises that is used principally for residential purposes and is separated from the rest of the premises by a barrier, walls, etc. No warrant is required if the part used for residential purpose is not separated from the rest of the premises, unless the whole premises is used principally for residential purpose.

Empowering the magistrate to issue a warrant to health officer for entering or breaking into premises

69. Section C1(4) of the draft PCD Regulation only provides that a magistrate can issue a warrant to a health officer for entering or breaking into a residential premises. Hon Margaret NG has suggested that in order to avoid hindering the effective investigation by a health officer of an infection or a leakage of a scheduled infectious agent in a premises because of dispute on whether the premises that a health officer intended to enter or break into under section C1(1) is a residential premises, the drafting of section C1 of the draft PCD Regulation should be revised to provide for the magistrate to issue a warrant to a health officer for entering or breaking into any premises.

70. The Administration has advised that in the actual situation, one of the following two scenarios can happen when a health officer seeks to enter a premises under section C1(1) -

- (a) if the occupier or the person appearing to be in charge of the premises, be it residential or non-residential, allows the health officer to enter, then no warrant is required; and
- (b) if the occupier or the person appearing to be in charge of the premises refuses the health officer's entry without a warrant, in case the health officer has reason to suspect that the premises may fall under the definition of "residential premises" under section C1(6), i.e. a place or part of a place that is used wholly or principally for dwelling purposes and constitutes a separate household unit, he will proceed to apply for a warrant under section C1(4). Otherwise, he is empowered to enter or break into the premises without a warrant under section C1(3).

71. The Administration considers that the present drafting of section C1 should serve the purpose and that there is no need to revise it to empower the magistrate to issue a warrant to a health officer for entering or breaking into any premises. The purpose of Miss NG's suggestion is to deal with the scenario described in paragraph 70(b) above. Nevertheless, to avoid doubt, the Administration will amend section C1(4) to provide that, in addition to the information to be provided to a magistrate provided under subsection (a) to (c) of that section, a health officer has to have reason to suspect that the premises is a residential premises and has been refused entry.

Empowering hospital staff etc. to stop and detain only

72. Members note that arising from the proposal mentioned in paragraph 51 above, section E5A will be added to the PCD Regulation to only empower hospital staff to stop and detain, and not to arrest, a person who is committing or has committed an offence in relation to isolation or quarantine. A similar power will be given under that section to staff of homes for the aged, child care centres, convalescent centres or similar establishments where a person may be placed under isolation or quarantine.

Others

73. The Administration has undertaken to revise certain sections of the draft PCD Regulation for the sake of clarity and consistency, which include the following -

- (a) section G3 - adding a new provision to make it an offence for people who take water from a well which a health officer has ordered to be filled up, or before it has been cleansed or disinfected to his satisfaction; and

- (b) section L2(3) and (4) - making the permission in section L2(3) and the condition in L2(4) in writing. Section L2(3) provides that the subject of the order shall not leave Hong Kong without the permission of a health officer during the period specified in the order. Section L2(4) provides that a health officer may attach any condition as he considers appropriate to be the permission referred to in subsection (3).

74. The draft amended PCD Regulation is in **Appendix III**.

75. At the request of the Bills Committee, the Administration has undertaken to spell out in LegCo Brief on the PCD Regulation to be gazetted any provision contained therein which is substantially different from that contained in the draft amended PCD Regulation.

Committee Stage amendments

76. The Committee Stage amendments to be moved by the Administration and agreed by the Bills Committee are in **Appendix IV**.

Resumption of Second Reading debate

77. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 28 May 2008.

Advice sought

78. Members are invited to note the deliberations of the Bills Committee and the date for resumption of the Second Reading debate on the Bill.

Bills Committee on Prevention and Control of Disease Bill

Membership list

Chairman Hon Vincent FANG Kang, JP

Deputy Chairman Dr Hon Joseph LEE Kok-long, JP

Members Hon Margaret NG
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki

(Total : 11 Members)

Clerk Miss Mary SO

Legal Adviser Mr Stephen LAM

Date 25 January 2008

**General framework of
the Public Health Emergency Regulation**

Depending on the circumstances of a particular public health emergency, the Public Health Emergency (PHE) Regulation may provide for the following:

Access to information

A health officer may require any person to give him access to any information possessed or controlled by the person that is relevant to the handling of a state of public health emergency.

Disclosure of information

The Secretary for Food and Health, or a public officer authorized by him, may disclose any information relating to the public health emergency if he considers it necessary for the protection of public health.

Power to requisition property

- (a) For the purpose of handling a public health emergency, the Director of Health (the Director) or any officer authorized by him may –
 - (i) requisition any property (to be listed in a Schedule);
 - (ii) give such direction and take such steps as to be necessary to secure effective use or possession of the requisitioned property; and
 - (iii) use and deal with the property as if he were the owner of the property.
- (b) The Director is obliged to notify the person from whom the property was requisitioned as soon as practicable after the use of it has ceased.
- (c) As far as possible, requisitioned property will be returned to the owner or the person from whom it was requisitioned.

Compensation for requisitioned property

- (a) Any person who sustains loss or damage in consequence of or arising out of the exercise of requisition power, or is entitled to the use of or rent from any requisitioned property, is entitled to recover such compensation as is just and equitable in the circumstances.
- (b) Any compensation claim should be made in writing to the Director within three months after the Director has notified the person that the use of the property has ceased. The Director may extend the period for making claims.
- (c) Upon receipt of the compensation claim, the Director will assess the amount of compensation and serve a notice on the claimant, either personally or by post, on the amount as soon as practicable.
- (d) The amount will be paid to the claimant if he agrees in writing that he accepts the amount as a full settlement of his claim.
- (e) Any dispute as to whether compensation is payable or the amount of compensation, in default of agreement, may be resolved or determined arbitration in accordance with the Arbitration Ordinance (Cap 341). The claimant should, within six months after the Director has served the notice, notify the Director that the dispute will be referred to arbitration.
- (f) Alternatively, instead of opting to resolve the dispute by arbitration, the claimant may, within six months after the Director has served the notice, institute civil proceedings for determining the dispute.

Appointment of medical and health professional

- (a) The Director may appoint an unregistered person to act as a medical and health professional, subject to any condition or duty that the Director may specify.
- (b) The Director may only appoint an unregistered person whom the Director considers suitable to act as a medical and health professional by virtue of his qualifications.

- (c) An unregistered person appointed by the Director to act as a medical and health professional is deemed to be registered under the relevant Ordinance (e.g. a person appointed by the Director to act as a medical practitioner is deemed to be registered under the Medical Registration Ordinance (Cap 161)).
- (d) The Director may specify the period of the appointment and terminate the appointment at any time.
- (e) The appointed person will cease to be deemed to be registered if he fails to comply with any of the conditions or duties specified by the Director.

2. We must emphasize that the above is only a general framework of the PHE Regulation. The actual provisions will be made having regard to the particular circumstances of the state of public health emergency.

Food and Health Bureau
May 2008

**DRAFT PROVISIONS OF THE PREVENTION AND
CONTROL OF DISEASE REGULATION (REVISED)**

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DRAFT PROVISIONS OF
THE PREVENTION AND CONTROL OF DISEASE
REGULATION

(REVISED)

PART A: PRELIMINARY

A1. Commencement

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

A2. Interpretation

In this Regulation, unless the context otherwise requires –

“appointed person” (獲委任人員) means–

- (a) a police officer;
- (b) a health officer; or
- (c) a person appointed by the Director under section A3;

“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 a specified infectious disease;

“cross-boundary aircraft” (跨境飛機) means an aircraft that is a cross-boundary conveyance;

“cross-boundary conveyance” (跨境運輸工具) means a conveyance that is engaged on a journey entering or leaving Hong Kong;

“cross-boundary public vehicle” (跨境公共車輛) means a public vehicle that is a cross-boundary conveyance;

“cross-boundary vessel” (跨境船隻) means a vessel that is a cross-boundary conveyance;

“decontamination” (除污) means to remove contamination;

“derat” (滅鼠) means to control or kill the rodent vector of any disease;

“disease control measure” (疾病控制措施) includes cleansing, deratting, disinfection, disinsection and decontamination;

“disinfect” (消毒) means to control, kill or eliminate the infectious agent of a disease;

“disinsect” (除蟲) means to control or kill the insect vector of any disease;

“military hospital” (軍方醫院) means a hospital of the Hong Kong Garrison;

“operator” (營運人) –

- (a) in relation to a conveyance, means its owner, charterer, master, pilot, commander or driver (as the case may be) or the person in charge of the conveyance or a person who is acting as an agent of the owner or the charterer or the person in charge of the conveyance; or
- (b) in relation to a point of entry, means the owner or the lessee, or a person who is in charge of the management of the point of entry or any part of it;

“point of entry” (入境口岸) means –

- (a) an entry or exit passage for –
 - (i) people entering or leaving Hong Kong;
 - (ii) cross-boundary conveyances entering or leaving Hong Kong; or
 - (iii) articles being transported into or out of Hong Kong; or
- (b) a place adjacent to the entry or exit passage in which any service is provided to the people or in respect of the cross-boundary conveyances entering or leaving Hong Kong or in respect of the articles being transported into or out of Hong Kong;

“prescribed fee” (訂明費用) means, in relation to any purpose of this Regulation, the fee prescribed for that purpose in Schedule 1;

“quarantine anchorage” (檢疫碇泊處) has the same meaning as in the Shipping and Port Control Regulations (Cap. 313 sub. leg. A);

“specified infectious disease” (指明傳染病) means a scheduled infectious disease or a disease caused by a scheduled infectious agent;

“traveller” (旅客) means a person arriving in or seeking to leave Hong Kong.

A3. Appointment of appointed persons

(1) The Director may appoint –

(a) a member of –

(i) the Auxiliary Medical Service; or

(ii) the Civil Aid Service; or

(b) a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap. 331) or any other public officer,

as an appointed person.

(2) An appointment under subsection (1) may be made either by rank or office as specified by the Director.

PART B: NOTIFICATION OF INFECTIOUS DISEASES

B1. Duty of medical practitioners to make reports

(1) If a medical practitioner has reason to suspect the existence of a case of a scheduled infectious disease, whether or not the person infected has died, he shall notify the Director immediately.

(2) A notification under subsection (1) is required to be in the form specified by the Director and be signed by the medical practitioner.

(3) If after notifying the Director, the medical practitioner verifies either that the scheduled infectious disease existed or that it did not exist, he shall immediately notify the Director.

(4) A person who contravenes subsection (1) or (3) or knowingly gives the Director any information that is false in a material particular commits an offence and is liable on conviction to a fine at level 2.

B2. Medical practitioners to give information as required by health officers

(1) A health officer may, for the purpose of facilitating the investigation of a case or suspected case of a specified infectious disease, require any medical practitioner to give to the health officer any information about the case as the health officer may require.

(2) A medical practitioner shall comply with a requirement made under subsection (1).

(3) A person who contravenes subsection (2) or knowingly gives to a health officer any information that is false in a material particular commits an offence and is liable on conviction to a fine at level 2.

B3. Duty of operators of cross-boundary conveyances to make reports

(1) If the operator of a cross-boundary aircraft, cross-boundary vessel or cross-boundary public vehicle has reason to suspect that there exists on board the aircraft, vessel or public vehicle –

- (a) a case or source of a specified infectious disease; or
- (b) a case or source of contamination,

he shall notify a health officer immediately.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

B4. Operators to give information according to requirement of health officers

(1) If a health officer has reason to suspect that there exists or existed in a point of entry or on board a cross-boundary conveyance –

- (a) a case or source of an infectious disease; or

(b) a case or source of contamination,
the health officer may require the operator of the point of entry or cross-boundary conveyance to give to the health officer any information about the case or source as the health officer may require.

(2) An operator shall comply with a requirement made under subsection (1).

(3) A person who contravenes subsection (2) or knowingly gives to a health officer any information that is false in a material particular commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

B5. Travellers to give information as required by health officers

(1) A health officer may, for the purpose of preventing the occurrence or spread of an infectious disease or contamination, require a traveller to give to the health officer any information required by the health officer.

(2) A traveller shall comply with a requirement made under subsection (1).

(3) A person who contravenes subsection (2) or knowingly gives to a health officer any information that is false in a material particular commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

B6. Defence to charges under sections B2, B4 or B5

It is a defence to a charge under section B2, B4 or B5 to prove that the information required to be given was not within the knowledge of the person charged and could not reasonably have been ascertained by him.

PART C: DISEASE PREVENTION, MEDICAL SURVEILLANCE,
EXAMINATION AND TEST

C1. Power of entry and examination

(1) Subject to subsection (3), if a health officer has reason to suspect that –

- (a) a contact or a person infected with a specified infectious disease is present in a place;
- (b) a case or suspected case of a specified infectious disease is connected with a place;
- (c) there is a leakage of a scheduled infectious agent in a laboratory that may pose a public health risk; or
- (d) a source of a specified infectious disease exists in a place other than a laboratory,

the health officer may enter the place or laboratory, and, where necessary, break into the place or laboratory in the presence of a police officer.

(2) On entering a place or laboratory under this section, a health officer may –

- (a) ascertain whether a contact or a person infected with a specified infectious disease is present in that place;
- (b) if there is a dead body in the place, examine the dead body for the purpose of ascertaining whether the body is infected with a specified infectious disease;
- (c) seize any article or part of an article for examination or testing if he has reason to suspect that the article is –
 - (i) a source of a specified infectious disease; or
 - (ii) connected with a case or suspected case of a specified infectious disease; and
- (d) take photographs or make any audio or video recording.

(3) Unless authorized by a warrant issued under subsection (4), a health officer shall not –

- (a) enter any residential premises without the permission of its occupier or a person appearing to him to be in charge of the premises; or
- (b) break into such premises.

(4) A magistrate may issue a warrant authorizing any health officer to enter or break into any premises if the magistrate is satisfied by information on oath by a health officer that –

- (a) admission into the premises has been refused and that the premises is residential premises;
- (b) the health officer has reason to suspect that a contact or a person infected with a specified infectious disease is present on the premises;

- (c) the health officer has reason to suspect that a case or suspected case of a specified infectious disease is connected with the premises; or
- (d) the health officer has reason to suspect that a source of a specified infectious disease exists on the premises.

(5) The power conferred by a warrant issued under subsection (4) on a health officer may be exercised by any health officer either alone or with the assistance of other persons.

(6) In this section, “residential premises” (住用處所) means a place or part of a place that is used wholly or principally for dwelling purposes and constitutes a separate household unit, but does not include the following –

- (a) a home for the aged, child care centre, convalescent centre or a similar establishment;
- (b) a point of entry;
- (c) a cross-boundary conveyance; and
- (d) a place of isolation or quarantine.

C2. Maintaining points of entry, cross-boundary aircrafts, vessels or public vehicles in sanitary condition

(1) The operator of a point of entry or a cross-boundary aircraft, cross-boundary vessel or cross-boundary public vehicle shall ensure, as far as practicable, that the point of entry or cross-boundary aircraft, cross-boundary vessel or cross-boundary public vehicle is maintained in a sanitary condition.

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

C3. Health officers may enter and inspect points of entry and cross-boundary conveyances

(1) A health officer may enter, without a warrant, a point of entry or a cross-boundary conveyance for the purpose of inspecting whether the point of entry, the cross-boundary conveyance or any article in or carried in or on it –

- (a) is maintained in a sanitary condition; and
- (b) is kept free from sources of an infectious disease or contamination.

(2) On entering a point of entry or a cross-boundary conveyance under subsection (1), a health officer may, for the purpose of ascertaining the sanitary condition of the point of entry or the cross-boundary conveyance –

- (a) seize any article or part of an article for examination or testing;
- (b) place any device in the point of entry or in or on the cross-boundary conveyance for the collection of any sample; or
- (c) take photographs or make any audio or video recording.

C4. Health officers may inspect journals, etc. of points of entry or cross-boundary conveyances

A health officer may, for the purpose of monitoring or investigating any matter concerning a case or source of an infectious disease or contamination, inspect and make a copy of any journal, logbook or record kept in respect of –

- (a) a point of entry; or
- (b) a cross-boundary conveyance.

C5. Import of human corpse, etc.

(1) A person shall not, without a permit in writing from the Director, knowingly import into Hong Kong –

- (a) human corpse or any part of such a corpse;
- (b) an infectious agent;
- (c) any human or animal tissue, or tissue fluid, or any part of a human or animal body, that the person has reason to suspect contains an infectious agent; or
- (d) any excreta, secretion, blood, or blood component, that the person has reason to suspect contains an infectious agent.

(2) The Director may specify in a permit referred to in subsection (1) any condition that he considers appropriate.

(3) A person to whom a permit is issued shall comply with any condition specified under subsection (2).

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 2 months.

C6. Medical surveillance, examination or test of contacts or infected or contaminated persons

(1) If a health officer has reason to suspect that a person is a contact or is infected with a specified infectious disease or is contaminated, the health officer may subject the person to medical surveillance or a medical examination or a test, which must not be more intrusive or invasive than is necessary for ascertaining the person's health condition.

(2) A health officer may specify conditions to be observed by the person.

(3) A person who fails to observe any condition specified under subsection (2) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

C7. Medical examination of persons arrested

A health officer may subject a person arrested under section 5 of the Ordinance to a medical examination or a test, which must not be more intrusive or invasive than is necessary for ascertaining the person's health condition.

PART D: VACCINATION AND PROPHYLAXIS

D1. Interpretation

In this Part –

“designated centre” (指定中心) means a hospital, clinic, health care centre or a similar establishment designated by the Director as a designated centre under section D3;

“designated disease” (指定疾病) means a specified infectious disease designated by the Director as a designated disease under section D2.

D2. Designation of designated diseases

(1) The Director may designate a specified infectious disease as a designated disease.

(2) The Director shall notify in the Gazette a designation under subsection (1).

(3) A notification under subsection (2) is not subsidiary legislation.

D3. Designation of designated centres

(1) The Director may –

- (a) designate any hospital, clinic, health care centre or similar establishment as a designated centre; and
- (b) specify any condition he considers appropriate in respect of the designation.

(2) The Director shall notify in the Gazette a designation under subsection (1).

(3) A notification under subsection (2) is not subsidiary legislation.

D4. Vaccination and prophylaxis

(1) A health officer may, for the purpose of preventing the occurrence or spread of an infectious disease, require a traveller at a point of entry to produce for inspection a certificate of vaccination or prophylaxis in the form described as the “Model International Certificate of Vaccination or Prophylaxis” in the International Health Regulations, certifying that the traveller has been vaccinated or has received prophylaxis against a designated disease in accordance with the International Health Regulations.

(2) For the purposes of subsection (1), a health officer may accept a certificate that is substantially in accordance with the form referred to in that subsection.

D5. Certification of vaccination and prophylaxis by medical practitioners

- (1) A medical practitioner who –
- (a) practises in a designated centre; and
 - (b) has administered, or supervised the administration of, vaccination and prophylaxis against a designated disease, in the centre, to a person, in accordance with the International Health Regulations,

may issue a certificate of vaccination or prophylaxis certifying the matters referred to in paragraph (b).

(2) Any person who, not being a person referred to in subsection (1) or section D6, issues a certificate of vaccination or prophylaxis –

- (a) certifying that a person has been vaccinated or has received prophylaxis against a disease in accordance with the International Health Regulations;
- (b) containing a representation that it is issued pursuant to the International Health Regulations; or
- (c) containing any reference to or a diagram or a picture that is related to the WHO or a reference to the International Health Regulations,

commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

D6. Administration and certification of vaccination or prophylaxis by health officers on payment of fees

A health officer may, on request and on the payment of the prescribed fee –

- (a) administer vaccination or prophylaxis against a designated disease, to a person, in accordance with the International Health Regulations; and
- (b) issue a certificate of vaccination or prophylaxis certifying the matters referred to in paragraph (a).

PART E: QUARANTINE AND ISOLATION

Quarantine and isolation of persons

E1. Quarantine of contacts

(1) If a health officer has reason to believe that a person is a contact, the health officer may, by order in writing, place the person under quarantine until a health officer considers that –

- (a) the person is not infectious; or
- (b) the quarantine can be replaced by medical surveillance.

(2) Without limiting the generality of subsection (1), any of the following circumstances are regarded as a reason for a health officer to believe that a traveller is a contact –

- (a) the traveller fails to produce a certificate of vaccination or prophylaxis for inspection as required by a health officer under section D4(1);
- (b) a health officer has reason to believe that the traveller has not been vaccinated or received prophylaxis against a designated disease (whether or not a certificate of vaccination or prophylaxis has been produced for inspection under section D4(1)); and
- (c) a health officer has reason to believe that the vaccination and prophylaxis that the traveller has received is not effective (whether or not a certificate of vaccination or

prophylaxis has been produced for inspection under section D4(1)).

E1A. Isolation of infected persons

If a health officer has reason to believe that a person is infected with a specified infectious disease, the health officer may, by order in writing, place the person under isolation until a health officer considers that –

- (a) the person is not infectious; or
- (b) the isolation can be replaced by medical surveillance.

Isolation of articles

E2. Isolation of infected articles

(1) If a health officer has reason to believe that an article is infected with a specified infectious disease, he may, by order in writing, place the article under isolation.

(2) A health officer may remove an article to any place for the purpose of placing the article under isolation.

(3) An article that is placed under isolation may be detained at any place appointed by a health officer for such period and subject to such conditions as he may specify.

(4) A person shall not remove an article that is placed under isolation from the place where it is isolated without the permission of a health officer.

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

Isolation of places

E3. Power to order places to be isolated

(1) Where the Director considers it necessary for the prevention of the spread of a specified infectious disease, he may, by order in writing, place any place under isolation.

- (2) The isolation order may –
- (a) provide for the complete isolation of the place that is the subject of the order; or
 - (b) provide for such degree of isolation of the place, and subject the place to such conditions or limitations, as the Director considers sufficient to prevent the spread of the disease concerned.

(3) An isolation order may be issued in such form or in such manner as, having regard to the circumstances, the Director considers best suited to bring the terms of such order to the notice of the public.

General provisions in relation to quarantine and isolation

E4. Quarantine and isolation orders in respect of persons

An order made by a health officer under section E1 or E1A to place a person under quarantine or isolation is required to specify –

- (a) the reason for quarantine or isolation; and
- (b) the terms of quarantine or isolation.

E5. Power to remove and detain persons for quarantine and isolation

To place a person under quarantine or isolation, a health officer may –

- (a) remove the person to a place in which he is to be quarantined or isolated;
- (b) detain him at the place in which he is quarantined or isolated; and
- (c) subject him to such conditions as the health officer may specify.

E5A. Escape from quarantine or isolation in hospitals or other establishments

(1) If a person who is placed under quarantine or isolation in a hospital, home for the aged, child care centre, convalescent centre or similar establishment escapes, the person may be –

- (a) stopped and detained by any member of the staff of the establishment from which he escaped;
- (b) conveyed to –
 - (i) the establishment from which he escaped; or
 - (ii) any other place authorized by a health officer, and
- (c) detained in the establishment or place.

(2) A person shall not obstruct, or assist in obstructing, a member of the staff of an establishment referred to in subsection (1) in the exercise of a power under this section.

(3) 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.

E6. Entry and exit restrictions

(1) No person shall leave a place in which he is placed under quarantine or isolation.

(2) No person other than a health officer shall –

- (a) enter a place in which another person is placed under quarantine or isolation; or
- (b) enter or leave a place that is placed under isolation,

without a permission granted under section E8.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

E7. Restrictions on bringing articles into or taking articles out of places placed under isolation

(1) No person other than a health officer shall bring any article into or take any article out of a place that is placed under isolation without a permission granted under section E8.

(2) A health officer may seize any article that is brought into or taken out of a place in contravention of subsection (1).

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

E8. General permission in respect of sections E6 and E7

A health officer may grant written permission to any person or persons of any class or category specified in the permission to do any act described in sections E6(1)(a), (b) and (c) and E7(1) subject to such exceptions, conditions or restrictions as are specified in the permission.

PART F: EXPOSURE OF PUBLIC TO INFECTION

F1. Persons not to expose others to infection

(1) A person shall not, knowing that he is a contact or is infected with a specified infectious disease, expose other persons to the risk of infection –

- (a) by his presence or conduct in –
 - (i) any public conveyance; or
 - (ii) any street, public place, place of entertainment or assembly, club, or hotel; or

(b) by carrying on any trade, business or occupation.

(2) A person who has the care of any person whom he has reason to believe is a contact or is infected with a specified infectious disease shall make every reasonable endeavour to prevent the person from doing any act described in subsection (1).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

F2. Examination of dead bodies

If a health officer has reason to believe that the body of a deceased person is infected with a specified infectious disease, a health officer may carry out a post-mortem examination on the body, and for that purpose, remove the body to a mortuary or other suitable place.

F3. Disposal of infected dead bodies

(1) If a health officer has reason to believe that the body of a deceased person is infected with a specified infectious disease, the health officer may issue directions concerning any or all of the following matters –

- (a) the disease control measures to be carried out in respect of the body;
- (b) the method of disposal of the body;
- (c) the place of burial or cremation of the body;
- (d) the time, route and method of removing the body to the place of burial or cremation.

(2) A health officer may cause the body to be disposed of if no person undertakes its disposal.

(3) A person who carries out the disposal of the body shall comply with any direction issued by a health officer under subsection (1).

(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.

F4. No infected dead body to be dealt with otherwise

(1) A person shall not deposit or cause to be deposited the body of a deceased person that a health officer has reason to believe is infected with a specified infectious disease in a place other than –

- (a) such place of burial or cremation as a health officer may direct under section F3;
- (b) a mortuary (whether or not situated within the precincts or any hospital or similar institution) that is maintained or controlled by –
 - (i) the Government;
 - (ii) a public hospital as defined in section 2(1) of the Hospital Authority Ordinance (Cap. 113); or
 - (iii) a hospital as defined in section 2(1) of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165);
- (c) a mortuary situated within the precincts of a military hospital; or
- (d) a funeral parlour that is licensed under section 4 of the Funeral Parlours Regulation (Cap. 132 sub. leg. AD).

(2) A person who knowingly contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

F5. Persons who die on cross-boundary conveyances

(1) If a person dies on a cross-boundary aircraft, cross-boundary vessel or cross-boundary public vehicle, its operator shall notify a health officer immediately.

(2) The operator of a cross-boundary aircraft, cross-boundary vessel or cross-boundary public vehicle shall comply with any directions as the health officer may make in respect of the disposal of the body.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

PART G: DISEASE CONTROL MEASURES

G1. Order to carry out disease control measures in respect of points of entry or premises

- (1) If a health officer –
- (a) has reason to believe that there exists or existed in a premises a case or source of a specified infectious disease; or
 - (b) finds a point of entry to be in an insanitary condition,

he may, by an order in writing served on the person described in subsection (2), require a disease control measure specified in the order to be carried out in respect of the premises or point of entry to the satisfaction of a health officer within the time specified in the order.

- (2) The person referred to in subsection (1) is –
- (a) in the case of a point of entry, its operator ; or
 - (b) in the case of other premises, its owner or occupier.

(3) A health officer may, for the purpose of carrying out a disease control measure required to be carried out under subsection (1), close the premises or remove any person from it.

(4) Except with the permission of a health officer, a person other than a health officer shall not –

- (a) enter or occupy; or
- (b) bring any article into or take any article out of,

any premises closed under subsection (3).

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

G2. Order to carry out disease control measures in respect of conveyances

- (1) If a health officer –

- (a) has reason to believe that there exists or existed on board a conveyance a case or source of a specified infectious disease; or
- (b) finds that a cross-boundary conveyance is in an insanitary condition or is contaminated,

he may, by order in writing served on the operator of the conveyance, require a disease control measure specified in the order to be carried out in respect of the conveyance to the satisfaction of a health officer within the time specified in the order.

(2) A health officer may, for the purpose of carrying out a disease control measure required to be carried out under subsection (1), stop, detain or close the conveyance or remove any person from it.

(3) Except with the permission of a health officer, a person other than a health officer shall not –

- (a) board or remain in; or
- (b) bring any article into or take any article out of,

a conveyance closed under subsection (2).

(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.

G3. Wells

(1) If a health officer is of the opinion that it is necessary to do so for the purpose of preventing the introduction or the spread of a specified infectious disease, he may, by an order in writing served on the owner of a well, require the well to be filled up, cleansed or disinfected to his satisfaction within the time specified in the order.

(2) Except with the permission of a health officer, a person other than a health officer shall not draw water from a well in respect of which an order is made under subsection (1) before the well is filled up, cleansed or disinfected as required by the order.

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

G4. Enforcement of orders made under sections G1, G2 or G3

(1) Where an order made under section G1, G2 or G3 is not complied with within the time specified in the order, a health officer or any person authorized by him may –

- (a) enter or board, or where necessary, break into in the presence of a police officer, the point of entry, other premises or conveyance; and
- (b) carry out the disease control measures required by the order.

(2) The costs incurred under subsection (1) may be recovered from the following persons as a debt due to the Government –

- (a) in the case of an order under section G1, the operator of the point of entry or the owner or the occupier of other premises;
- (b) in the case of an order under section G2, the operator of the conveyance; or
- (c) in the case of an order under section G3, the owner of the well.

G5. Disinfection and destruction of articles

(1) If a health officer has reason to believe that an article is, or may have been, infected with a specified infectious disease, he may –

- (a) order a disease control measure to be carried out in respect of the article; or
- (b) except where the article is a conveyance, destroy the article.

(2) The costs of carrying out any disease control measure in respect of an article or the destruction of an article may be recovered, as a debt due to the Government, from –

- (a) where the article is a conveyance, its operator; or
- (b) in the case of other articles, the owner or the person who has possession or control of the articles.

PART H: CONTROL OF LABORATORY'S HANDLING OF SCHEDULED INFECTIOUS AGENTS

H1. Requirement to surrender scheduled infectious agents

(1) The Director may require the owner or the person in charge of a laboratory to surrender a scheduled infectious agent under his control or possession for disposal by the Director if, having regard to the circumstances, the Director has reason to believe that –

- (a) the laboratory does not have sufficient facilities and equipment to handle the scheduled infectious agent;
- (b) the person handling the agent in the laboratory does not have the necessary competency to do so; or
- (c) the agent is handled by the laboratory in a manner that may pose a public health risk.

(2) The owner or the person in charge of the laboratory shall comply with the requirement made under subsection (1).

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

H2. Laboratory shall report cases of leakage of scheduled infectious agents

(1) If it comes to the knowledge of the owner or the person in charge of a laboratory that there is a leakage of a scheduled infectious agent in the

laboratory that may pose a public health risk, he shall notify the Director immediately.

(2) The owner or the person in charge of the laboratory shall give to the Director any information that is required by a health officer to facilitate the investigation of the leakage.

(3) A person who contravenes subsection (1) or (2) or knowingly gives any information that is false in a material particular commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

PART I: DECLARATION AND CERTIFICATION IN RESPECT OF CROSS-BOUNDARY CONVEYANCES

11. Submission of Maritime Declaration of Health

(1) The operator or surgeon of a cross-boundary vessel that enters the waters of Hong Kong shall submit to a health officer a declaration, in the form described as the “Model of Maritime Declaration of Health” in the International Health Regulations, declaring the matters specified in the form.

(2) The person who signs or counter-signs the declaration that is submitted under subsection (1) shall ensure that the information contained in the declaration is not false in any material particular.

(3) A health officer may –

- (a) waive the requirement to submit the declaration under subsection (1); or
- (b) accept for the purpose of subsection (1) a declaration that is substantially in accordance with the form referred to in that subsection.

(4) Subject to subsection (3), a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

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

I2. Ship Sanitation Control Exemption Certificate and Ship Sanitation Control Certificate

(1) The operator or surgeon of a cross-boundary vessel that enters the waters of Hong Kong shall produce for inspection by a health officer a certificate that is –

- (a) in accordance with the form described as the “Model Ship Sanitation Control Exemption Certificate/Ship Sanitation Control Certificate” in the International Health Regulations; and
- (b) issued in respect of the vessel by a port of a State Party to the International Health Regulations being authorized to issue the certificate.

(2) A health officer may –

- (a) waive the requirement to submit the certificate under subsection (1); or
- (b) accept for the purpose of subsection (1) a certificate that is substantially in accordance with the form referred to in that subsection.

(3) Subject to subsection (2), a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

I3. Issue of Ship Sanitation Control Exemption Certificate by health officer

(1) A health officer may, on the payment of the prescribed fee, issue a Ship Sanitation Control Exemption Certificate, in a form specified by the

Director, in respect of a cross-boundary vessel certifying the matters specified in the form.

(2) A health officer shall not issue a certificate in respect of a cross-boundary vessel unless he is satisfied that the vessel is –

- (a) in a sanitary condition; and
- (b) free from any evidence of infection or contamination.

I4. Issue of Ship Sanitation Control Certificate by health officer

(1) A health officer may, on the payment of the prescribed fee, issue in respect of a cross-boundary vessel, a Ship Sanitation Control Certificate, in a form specified by the Director, certifying the matters specified in the form.

(2) If a health officer has specified a disease control measure to be carried out in respect of the vessel, a health officer may state in the certificate that the measure has or has not been carried out to the satisfaction of a health officer.

I5. Endorsement on certificates

A health officer may endorse on a certificate that is produced for inspection under section I2(1) matters concerning any or all of the following –

- (a) whether or not any evidence of infection or contamination was found on the vessel in respect of which the certificate was issued;
- (b) if such evidence was found on the vessel, a description of the evidence;
- (c) the sanitariness of the vessel;
- (d) whether any disease control measure has been or is to be carried out in respect of the vessel;
- (e) if a certificate (the new certificate) has been issued under section I4 in respect of the vessel, a statement declaring that the certificate is superseded by the new certificate.

I6. Health Part of Aircraft General Declaration

(1) The operator of a cross-boundary aircraft shall submit to a health officer a declaration, in the form described as the “Health Part of the Aircraft General Declaration” in the International Health Regulations, declaring the matters specified in the form.

(2) The person who signs or counter-signs the declaration that is submitted under subsection (1) shall ensure that the information contained in the declaration is not false in a material particular.

(3) A health officer may –

(a) waive the requirement to submit the declaration under subsection (1); or

(b) accept for the purpose of subsection (1) a declaration that is substantially in accordance with the form referred to in that subsection.

(4) Subject to subsection (3), a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

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

PART J: PRATIQUE**J1. Cross-boundary vessels to show quarantine signals**

(1) Subject to subsection (3), an operator of a cross-boundary vessel that enters the waters of Hong Kong shall ensure that the appropriate quarantine signal set out in Schedule 2 is shown on the vessel.

(2) The operator shall ensure that the quarantine signal is not lowered until the vessel has been granted free pratique.

(3) A cross-boundary vessel that is on a voyage to any place outside Hong Kong may, with the permission of a health officer, proceed with its voyage or tranship its passengers for the purpose of completing such voyage without showing any quarantine signal.

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

J2. Cross-boundary vessels without free pratique required to proceed to quarantine anchorage

(1) An operator of a cross-boundary vessel that enters the waters of Hong Kong shall ensure that the vessel proceeds immediately to a quarantine anchorage or other anchorage as permitted by a health officer, unless the vessel has been granted free pratique.

(2) A health officer may permit a cross-boundary vessel that has not been granted free pratique to proceed to an anchorage that is not a quarantine anchorage.

(3) The operator of a vessel that is in a quarantine anchorage or in an anchorage referred to in subsection (2) –

(a) shall not remove the vessel from there until it is released with the permission of a health officer; and

(b) shall move the vessel to any part of the anchorage as and when required by the Director of Marine.

(4) Despite subsection (3), the vessel may be removed from the quarantine anchorage because of stress of weather, but the operator shall move the vessel back to the quarantine anchorage immediately after such stress of weather subsides.

(5) A person who contravenes subsection (1), (3) or (4) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 2 months.

J3. No disembarking of any person and unloading of articles without free pratique

(1) An operator of a cross-boundary vessel that enters the waters of Hong Kong shall ensure that no person is disembarked and no article is unloaded from the vessel, unless permitted by a health officer or the vessel has been granted free pratique.

(2) A health officer may permit the disembarking of persons and unloading of articles from a cross-boundary vessel that has not been granted free pratique.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

J4. Cross-boundary vessels shall not be approached without permission

(1) Where a cross-boundary vessel is showing a quarantine signal, except with the permission of a health officer, no person other than a health officer may approach within 30 m of the vessel or receive or take any person or article, directly or indirectly, from the vessel or from any person on board the vessel.

(2) A person who boards the vessel with the permission of a health officer shall observe such precautions as the health officer may require.

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

J5. Free pratique

A health officer may grant free pratique in respect of a cross-boundary vessel that enters the waters of Hong Kong if, in his opinion, the vessel appears to be in a sanitary condition.

PART K: REGULATION ON LANDING AND DEPARTURE OF CROSS-BOUNDARY AIRCRAFTS

K1. Restrictions on landing and departure of cross-boundary aircrafts

(1) If a health officer has reason to believe that there exists or existed on board a cross-boundary aircraft a case or source of a specified infectious disease or a case or source of contamination, he may direct the Director-General of Civil Aviation to prohibit the aircraft from –

- (a) landing at any aerodrome other than an aerodrome or a particular part of an aerodrome designated by a health officer;
- (b) leaving such aerodrome or such part of aerodrome except with the permission of a health officer; and
- (c) embarking or disembarking any person or loading or unloading any article except with the permission of a health officer.

(2) If a prohibition imposed pursuant to subsection (1)(a) or (b) is contravened, the operator of the aircraft concerned commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 2 months.

(3) If a prohibition imposed pursuant to subsection (1)(c) is contravened, the operator of the aircraft concerned commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

PART L: CONTROL MEASURES IN RESPECT OF SPECIFIED DISEASES

L1. Specified diseases

In this Part, “specified disease” (指明疾病) means any of the following scheduled infectious diseases –

- (a) Severe Acute Respiratory Syndrome;

- (b) Influenza A (H2), Influenza A (H5), Influenza A (H7) or Influenza A (H9); and
- (c) Extensively Drug-Resistant Tuberculosis.

L2. Persons prohibited from leaving Hong Kong without permission of health officers

- (1) If a health officer has reason to believe that a person –
 - (a) is suffering from a specified disease; or
 - (b) has been exposed to the risk of infection of a specified disease,

a health officer may, by order in writing, prohibit the person from leaving Hong Kong without the written permission of a health officer during a period specified in the order.

(2) A health officer shall serve a copy of the order on the subject of the order, either personally or by post, but whether or not it is served, the order comes into force immediately on being made.

(3) The subject of the order shall not leave Hong Kong without the permission of a health officer during the period specified in the order.

(4) A health officer may attach any condition in writing as he considers appropriate to the permission referred to in subsection (3).

- (5) A person who –
 - (a) knowingly contravenes subsection (3); or
 - (b) fails to comply with a condition attached under subsection (4),

commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

L3. Power to stop and detain persons seeking to leave Hong Kong in contravention of section L2(3)

If a person seeks to leave Hong Kong in contravention of section L2(3), an appointed person may –

- (a) stop and detain the person in a point of entry; or
- (b) remove the person to and detain the person in another place,

so that a health officer may subject the person to a medical examination or a test.

L4. Measuring temperature of travellers

(1) As a measure for preventing the introduction into and the transmission from Hong Kong of a specified disease, any person authorized by the Director for the purpose of this subsection may take the body temperature of a traveller who is at a point of entry.

(2) An authorized person may stop and detain any traveller until the traveller's body temperature can be taken under subsection (1).

PART M: MISCELLANEOUS

M1. Operators to give assistance to health officers

(1) An operator of a point of entry or a cross-boundary conveyance shall give such reasonable assistance as may be required by a health officer in the execution of the health officer's functions under this Regulation.

(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.

M2. Exercise of health officer's powers

Any act or thing that may be done by a health officer under a power given by this Regulation may be done by a person acting under the direction of a health officer.

FEES

PART 1

ADMINISTRATION OF VACCINATION OR PROPHYLAXIS AGAINST A DESIGNATED DISEASE AND ISSUE OF A CERTIFICATE OF VACCINATION OR PROPHYLAXIS

Item	Designated disease	Amount \$
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PART 2

ISSUE OF SHIP SANITATION CERTIFICATES

1. Ship Sanitation Control Exemption Certificate
2. Ship Sanitation Control Certificate

SCHEDULE 2

[s. J1]

QUARANTINE SIGNALS

Signals to be shown by cross-boundary vessels

1. Every cross-boundary vessel that has not been granted free pratique shall show the following signals (whichever is appropriate) –

- (a) by day –
 - (i) the Flag Signal Q: meaning “my ship is healthy and I request free pratique”;
 - (ii) the International Code Signal “Q.Q.”: meaning “I require health clearance”; or
 - (iii) the International Code Signal “Z.V.”: meaning “I declare I have been in an infected area during the last 30 days”; and

(b) by night, during the entire time between sunset and sunrise, but only when the vessel is within the waters of Hong Kong, a signal comprising a red light over a white light, the lights being not more than 2 m apart, and meaning “I have not free pratique”.

2. The day signal shall be shown at the vessel’s masthead or other conspicuous place where it can be best seen.

3. The night signal shall be shown at the vessel’s peak or other conspicuous place where it can be best seen.

PREVENTION AND CONTROL OF DISEASE BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of “article”, in paragraph (a), by deleting “(other than a human being)”.</p> <p>(b) By deleting the definition of “isolation”.</p> <p>(c) By deleting the definition of “quarantine”.</p>
5(2)	<p>(a) By deleting everything after “a police officer,” and before “exercising a power” and substituting “a member of the Auxiliary Medical Service or a member of the Civil Aid Service or a public officer appointed under this Ordinance who is”.</p> <p>(b) By deleting everything after “such obstruction,” and substituting “that officer or member may arrest that person without a warrant.”.</p>
5(3)	<p>(a) By deleting “Where a health officer, or a public officer or a person” and substituting “Where a health officer or a member of the Auxiliary Medical Service or a member of the Civil Aid Service or a public officer”.</p> <p>(b) By deleting “the health officer, or the public officer or the person appointed under this Ordinance” and substituting “the person who made the arrest”.</p>
6(1)	By deleting paragraph (a).

Part 4

By deleting the heading and substituting “REGULATIONS”.

7

In the heading, by deleting “**regulation**” and substituting “**regulations**”.

8

(a) By adding –

“(1A) The Chief Executive in Council shall review from time to time, or cause to be reviewed from time to time, the public health emergency in respect of which the regulation is made.”.

(b) By adding –

“(5) For the purposes of a regulation made under subsection (2)(c), property may be requisitioned –

(a) by requiring a person to place it either temporarily or permanently at the disposal of the public officer requisitioning it; or

(b) by the public officer requisitioning it taking possession of it either temporarily or permanently.”.

12

(a) By deleting subclause (2).

(b) By adding –

“(2A) The Director shall serve an order made under subsection (1) on the person in respect of whom it is made, either personally or by post, within 7 days after the order is made.

(2B) Any dispute arising from an order made under subsection (1) on the question whether compensation is payable or the amount of compensation shall, in the absence of agreement, be resolved or determined in accordance with this section.

(2C) The dispute shall be resolved or determined by arbitration under the Arbitration Ordinance (Cap. 341) if the party disputing the Director's order ("the claimant"), within 6 months after the Director makes the order, serves a notice on the Director notifying the Director that the dispute will be referred to arbitration and proceeds to arbitration in accordance with the Arbitration Ordinance (Cap. 341).

(2D) Instead of proceeding to arbitration in accordance with the Arbitration Ordinance (Cap. 341) pursuant to subsection (2C), the claimant may, within 6 months after the Director makes the order, institute civil proceedings for the determination of the dispute.”