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Paper for the House Committee meeting on 3 July 2020

**Third and final report of the Subcommittee on Subsidiary Legislation
Relating to the Prevention and Control of Disease**

Purpose

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation Relating to the Prevention and Control of Disease ("the Subcommittee") on another four items of subsidiary legislation under its study which are in relation to the immigration control measures and social distancing measures in place to combat coronavirus disease 2019 ("COVID-19") ("the four items of subsidiary legislation").

The four items of subsidiary legislation

2. The Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No. 3) Regulation 2020 (L.N. 116 of 2020), the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places (Amendment) (No. 2) Regulation 2020 (L.N. 117 of 2020), the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 3) Regulation 2020 (L.N. 118 of 2020) and the Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 4) Regulation 2020 (L.N. 119 of 2020) were published in the Gazette on 2 June 2020. The four items of subsidiary legislation are made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599)¹ having regard to the latest situation of public health emergency relating to COVID-19.

¹ Under section 8 of the Ordinance, the Chief Executive in Council may make regulations for the purposes of preventing, combating or alleviating the effects of a public health emergency and protecting public health on an occasion of a public health emergency.

3. L.N. 116 and L.N. 117 of 2020 amend the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C) and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E) respectively to, among others, introduce a two-tier regime under which the compulsory quarantine requirement under the above two Regulations applies to persons arriving at Hong Kong from a Category 1 specified place, and does not apply to persons arriving at Hong Kong from a Category 2 specified place if they meet certain conditions ("the two-tier regime"); empower the Secretary for Food and Health ("the Secretary"), by notice published in the Gazette,² to specify the Category 1 and Category 2 specified places concerned and conditions for a Category 2 specified place. The above apart, L.N. 116 of 2020 extends the expiry date of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation for a month from 7 June 2020 to 7 July 2020, whereas L.N. 117 of 2020 expands the criteria for the Chief Secretary for Administration ("the Chief Secretary") to exempt travellers from the quarantine requirement under the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation and extends the expiry date of this Regulation for three months from 18 June 2020 to 18 September 2020. As regards the other two items of subsidiary legislation, L.N. 118 of 2020 amends the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) to extend its expiry date from 27 June 2020 to 31 August 2020. L.N. 119 of 2020 amends the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) to extend its expiry date from 28 June 2020 to 31 August 2020. L.N. 116 to L.N. 119 of 2020 come into operation on 5 June 2020.

4. L.N. 116 to L.N. 119 of 2020 were tabled before the Legislative Council ("LegCo") at its meeting of 3 June 2020 and are subject to negative vetting by LegCo.

The Subcommittee

5. At the House Committee meeting on 5 June 2020, Members agreed that L.N. 116 to L.N. 119 of 2020 should be studied by the Subcommittee on Twelve Pieces of Subsidiary Legislation Relating to the Prevention and Control of Disease and Gazetted Respectively on 27 March, 28 March, 1 April, 28 April, 5 May and 19 May 2020. The membership of the above Subcommittee was reopened and the Subcommittee was renamed as "Subcommittee on Subsidiary Legislation Relating to the Prevention and Control of Disease". The membership list of the Subcommittee is in **Appendix I**.

² A notice so published is not subsidiary legislation and hence not subject to amendment by the Legislative Council ("LegCo").

6. Under the chairmanship of Ms CHAN Hoi-yan, the Subcommittee has held one meeting with the Administration to discuss the four items of subsidiary legislation.

7. To allow more time for the Subcommittee to study the four items of subsidiary legislation, the Subcommittee agreed that the Chairman should move a motion before the expiry of the 28 days' scrutiny period (i.e. the Council meeting of 24 June 2020) to extend the period for amending the four items of subsidiary legislation to the first Council meeting of the next legislative session. However, the motion was not dealt with at the Council meeting of 24 June 2020 before the adjournment of the meeting. As such, the period for amending the four items of subsidiary legislation has expired at the Council meeting of 24 June 2020.

Deliberations of the Subcommittee

Immigration control measures

Conditions for a Category 2 specified place in China or a Category 2 specified foreign place

8. Before the amendments to sections 3 and 12 of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation were introduced by L.N. 116 of 2020, all persons arriving at Hong Kong from the Mainland, Macao or Taiwan, and persons arriving at Hong Kong from other places but having stayed in the Mainland, Macao or Taiwan during the 14 days before the date of arrival, were subject to compulsory quarantine for a period of 14 days beginning on the date of arrival. For persons arriving at Hong Kong from a place outside China, before the amendments introduced by L.N. 117 of 2020 to sections 3 and 12 of the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation, those persons arriving from a place outside China as specified by the Secretary by a notice published in the Gazette, or having stayed in such a place during the 14 days before the date of arrival would be subject to compulsory quarantine.

9. L.N. 116 of 2020 amends the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation to, among others, introduce a two-tier regime under which the compulsory quarantine requirement under the Regulation applies to a person arriving at Hong Kong from a place in China other than Hong Kong who has stayed in a Category 1 or Category 2 specified place in China or a

Category 1 or Category 2 specified foreign place³ before the person's arrival; and does not apply to a person arriving at Hong Kong who has stayed in a Category 2 specified place in China or a Category 2 specified foreign place if that person satisfies an authorized officer that the person meets the conditions specified by the Secretary for that place. The Secretary is empowered to, by notice published in the Gazette, specify any place in China other than Hong Kong as a Category 1 specified place in China; any place in China other than Hong Kong that is not a Category 1 specified place in China as a Category 2 specified place in China; and conditions for a Category 2 specified place in China.

10. L.N. 117 of 2020 amends the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation to, among others, introduce a two-tier regime, similar to that referred to in paragraph 9 above, under which the compulsory quarantine requirement under the above Regulation applies to a person arriving at Hong Kong from a place outside China who has stayed in a Category 1 or Category 2 specified foreign place or a Category 1 or Category 2 specified place in China⁴ before the person's arrival; and does not apply to a person arriving at Hong Kong who has stayed in a Category 2 specified foreign place or a Category 2 specified place in China if that person satisfies an authorized officer that the person meets the conditions specified for that place. Similar to the mechanism provided for under L.N. 116 of 2020, the Secretary is empowered to, by notice published in the Gazette, specify any place outside China as a Category 1 specified foreign place; any place outside China that is not a Category 1 specified foreign place as a Category 2 specified foreign place; and conditions for a Category 2 specified foreign place.

11. According to the Administration, since prevention and control of COVID-19 is expected to be a part of the new normal of the daily operation of the society, the above amendments would serve the medium-term need for putting in place a legal framework that allows differentiation of places by their respective public health risks level on the one hand, and on the other hand has built-in flexibility to allow for differential quarantine or other infection control safeguards to be imposed or lifted in a relatively quick but predictable, targeted and transparent manner. A specified condition for a Category 2 specified place in China and a Category 2 specified foreign place may include having a negative reverse transcription polymerase chain reaction ("RT-PCR") test for COVID-19

³ A "Category 1 specified foreign place" or a "Category 2 specified foreign place" as defined in section 2 of the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation as amended by L.N. 117.

⁴ A "Category 1 specified place in China" or a "Category 2 specified place in China" as defined in section 2 of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation as amended by L.N. 116.

conducted by a recognized laboratory within the seven days prior to arrival in Hong Kong to the satisfaction of the Director of Health.

12. Members consider that the above refined immigration control measures could strike a balance between upholding public health protection and allowing room for gradual resumption of normal economic activities of the society if situation permits. Given that the COVID-19 situation in Guangdong Province, Hong Kong and Macao has relatively subsided and the economic and social activities among these three places are closely connected, members including Mr YIU Si-wing, Mr Christopher CHEUNG, Mr SIU Ka-fai, Mr CHAN Chun-ying, Mr Vincent CHENG and Ms CHAN Hoi-yan have enquired about the progress of enabling mutual recognition of virus test results under the framework of joint prevent and control of the Health Commission of Guangdong Provinces, the Department of Health and the Macao Health Bureau. They are gravely concerned that without mutual recognition of virus test results, travellers from Hong Kong to Guangdong Province and Macao are required to observe the 14-day compulsory quarantine requirement imposed by the relevant authorities. Dr LO Wai-kwok goes further to suggest the introduction of a "Health Code" system for the Guangdong-Hong Kong-Macao Greater Bay Area to facilitate cross-boundary flow of people within the Area.

13. The Administration has assured members that it has been actively discussing with the relevant authorities of Guangdong Province and the Government of the Macao Special Administrative Region respectively the arrangement for mutual recognition of virus test results, to be done through the "Health Codes" of the three places, under the framework of joint prevention and control. It will announce the details as soon as possible after the relevant discussions have been concluded.

14. The Administration has further advised that the governments of Guangdong Province and Hong Kong are considering the launch of a pilot scheme to relax the restrictions on cross-boundary movement of people between the two places, who have not left Hong Kong or Guangdong in the 14 days prior to their departure, within certain limits in terms of the number or categories of persons eligible for exclusion from quarantine requirement. The "Hong Kong Health Code" system will enable the virus test results of participants of the pilot scheme in Hong Kong to be uploaded onto the code. Before departing from Hong Kong, eligible persons with negative test results can connect to the electronic platform through a web browser using smart phones or mobile devices, and apply for the "Hong Kong Health Code" online and download it to their mobile phones or devices. To facilitate the mutual recognition of test results by the boundary control officers of Guangdong and Hong Kong, participants of the pilot scheme can on their own accord choose to convert the "Hong Kong Health Code" for use on the "Yuekang Code" system of Guangdong for health declaration purpose when they enter

Guangdong. Eligible persons arriving at Hong Kong from Guangdong can also choose to use the code conversion function on the "Yuekang Code" to directly transfer the valid nucleic acid test results onto the platform for filling in the electronic health declaration form for entering Hong Kong.

15. Noting that a quota may be introduced under the pilot scheme, Mr YIU Si-wing, Mr SHIU Ka-fai and Mr Vincent CHENG have strongly urged the Administration to consider the travel need of not only those people who were on official duty or business travel but also cross-border families and grass-root persons who have a genuine need to travel between Guangdong Province and Hong Kong for purposes such as taking care of family members or earning a living. The Administration has explained that the situation of COVID-19 outbreak in Hong Kong remains very volatile, with some imported and local cases recorded in the past few weeks. The pilot scheme will be a first step in gradually relaxing the compulsory quarantine requirements for people travelling between Guangdong Province and Hong Kong after assessing the relevant public health risks. If it is decided that a quota on the number of persons will be imposed under the pilot scheme, the Administration will consider a suitable mechanism for allocating the quota, such as through an open booking system.

16. Members are concerned that it is more expensive to take nucleic acid tests in Hong Kong, which costs in the range of \$1,000 and \$4,000 for each test, than in Macao, Shenzhen and Zhuhai. They consider it undesirable to leave it to market forces to find the equilibrium price. In their view, the Administration should have a role to play in lowering the price of testing. Mr YIU Si-wing has enquired whether the specimens collected for RT-PCR tests could be examined centrally by the laboratory of The University of Hong Kong-Shenzhen Hospital with a view to lowering the price. The Administration has advised that it has been encouraging and helping local private laboratories to enhance their testing capabilities for COVID-19, as well as bringing down the price by increasing market competition. At the same time, with a view to lowering the price of testing, it is working with the private testing sector to actively explore ways to lower the costs as much as possible while upholding the testing standards.

Exemption from compulsory quarantine requirement for inbound travellers

17. Under section 4 of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation and section 4 of the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation, the Chief Secretary is empowered to designate any person or category of persons to be exempted from the quarantine requirement under the above two Regulations if certain criteria are satisfied. L.N. 117 of 2020 amends the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation to give the Chief Secretary power to grant exemption from the quarantine requirement in respect of a person or

persons whose travelling is necessary for purposes relating to manufacturing operations, business activities or the provision of professional services in the interest of Hong Kong's economic development, and thus be aligned with the relevant arrangement under section 4(1)(b) of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation.

18. Members note that the exemption arrangement for various categories of persons would be hammered out by the relevant bureaux for consideration of the Chief Secretary taking into account whether the travel is essential and is in the interest of Hong Kong's economic development, such that the total number of exempted persons are subject to control. Separately, as advised by the Administration, in practice, the categories to be designated under the criterion as referred to in paragraph 17 above is likely to be made on a place-by-place basis having regard to the epidemic situation and the bilateral arrangement of relaxation of essential travel between Hong Kong and a particular country or place to a certain extent (i.e. the "travel bubble" concept) as a prerequisite of specifying a particular country or place on the whole before relaxation of quarantine arrangement.

19. Mr CHAN Chun-ying has enquired about whether the exemption from compulsory quarantine requirement would continue to be granted to eligible persons upon the implementation of mutual recognition of virus test results between Guangdong Province and Hong Kong and that between Macao and Hong Kong, which is to be done through the "Health Codes" of the three places. The Administration has replied in the positive, adding that unless being excluded from the requirement subject to meeting certain conditions (such as obtaining a negative COVID-19 test result) in respect of arrivals from a Category 2 specified place, or being exempted pursuant to section 4 of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation, arrivals from Category 1 and Category 2 specified places both within and outside China will be subject to compulsory quarantine.

20. In response to the repeated calls from Mr Christopher CHEUNG, Mr SHIU Ka-fai and Mr CHAN Chun-ying that the Administration should further expand the coverage of the exemption scheme to more companies and personnel of the financial and retail sectors, the Administration has affirmed that where appropriate, the relevant bureaux would continue to hammer out the relevant exemptions for consideration of the Chief Secretary. In the meantime, companies and personnel including those of financial institutions and securities companies, and the retail sector which fulfil the prevailing criteria are eligible for applying for exemption.

Social distancing measures

21. Social distancing is another infection control measure to combat COVID-19. To this end, the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation imposes certain temporary requirements and directions in relation to catering businesses and certain scheduled premises⁵. L.N. 118 amends the Regulation to extend its expiry date from 27 June 2020 to 31 August 2020. At the time of the discussion with the Administration on 15 June 2020, the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation prohibits group gatherings of more than eight persons in any public place⁶, and 14 types of group gatherings are exempted from the prohibition as set out in Schedule 1 to the Regulation. L.N. 119 amends the Regulation to extend its expiry date from 28 June 2020 to 31 August 2020.

22. Noting that Ocean Park has reopened on 13 June 2020 and Hong Kong Disneyland Park would reopen on 18 June 2020 against the backdrop of resuming Hong Kong's economic and social activities in a gradual manner under the new normal with COVID-19 becoming just another endemic virus in the community, Ms CHAN Hoi-yan has enquired about the Administration's timetable to further relax and ultimately lift the various social distancing measures under the two Regulations.

23. Referring to the Green Lifestyle Local Tour Incentive Scheme earlier rolled out by the Commerce and Economic Development Bureau, Mr YIU Si-wing has urged the Food and Health Bureau to consider further relaxing the number of persons constituting a "group gathering" prohibited under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation as far as the health risk assessment permits to meet the policy objective of the above Scheme to boost local tourism and related sectors including catering. The above apart, taking into account that all catering business premises are subject to the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation and are required to follow a series of infection control

⁵ The scheduled premises include amusement game centres, bathhouses, fitness centres, places of public entertainment, premises (commonly known as party rooms) that are maintained or intended to be maintained for hire for holding social gatherings, beauty parlours, club-houses, establishments (commonly known as clubs or nightclubs) that are open late into the night, usually for drinking, and dancing or other entertainment, karaoke establishments, mahjong-tin kau premises, and massage establishments.

⁶ "Public place" is defined in section 2 of the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation to mean a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise.

requirements and restrictions,⁷ Mr YIU Si-wing has suggested that the scope of group gathering exemptions under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation should be broadened to include group gatherings held at catering business premises such that wedding and other banquets and gathering of families or friends of a larger scale could be resumed.

24. The Administration has advised that it has all along adopted the "suppress and lift" strategy and strived to strike a balance among public health protection, economic impact and social acceptance, maintaining the various disease prevention measures while allowing room for gradual resumption of normal operation and activities of the society when the situation permits. In the meantime, there is still a need to continue imposing suitable restrictions on public gatherings, especially to contain the risk of disease transmission in large-scale unrestricted group gatherings. That said, it assures the Subcommittee that it would review the various measures in place from time to time in accordance with the development of the epidemic situation, and would make suitable adjustments taking into account all relevant factors.

25. Subsequent to the meeting, the Administration has informed the Subcommittee in writing that having regard to the latest public health risk, it is an appropriate time to relax the existing social distancing measures to send a clear signal to various sectors of the society that social and economic activities may further resume subject to fulfilment of relevant infection control measures, so as to facilitate the recovery of the local economy. Against the above backdrop, it gazetted on 16 June 2020 directions and amendments under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation and the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation to, among others, extend the social distancing measures in relation to catering businesses, scheduled premises and group gatherings in public places. The measures came into effect on 19 June 2020 for a period of 14 days till 2 July 2020. These measures include removing the limit on the number of persons allowed to be seated together at one table at the catering business premises, relaxing the number of persons constituting a "group gathering" prohibited under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation from more than eight persons to more than 50 persons and providing for an exemption for group gatherings at catering business premises (that sell or supply food or drink for on-site consumption) so that such premises are no longer subject to the prohibition on group gathering, to name but a few.

⁷ Catering business premises are currently subject to the restrictions under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation such as the eight-person-per-table restriction. Such premises, if they are public places, are also subject to the restriction on public gathering under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation.

Advice sought

26. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
2 July 2020

**Subcommittee on Subsidiary Legislation
Relating to the Prevention and Control of Disease**

Membership list*

Chairman Hon CHAN Hoi-yan

Members Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Hon CHAN Chun-ying, JP
Hon LUK Chung-hung, JP
Hon Vincent CHENG Wing-shun, MH, JP

(Total : 12 members)

Clerk Ms Maisie LAM

Legal Adviser Miss Rachel DAI
Mr Alvin CHUI
Mr Mark LAM

* Changes in membership are shown in Annex.

Annex to Appendix

**Subcommittee on Subsidiary Legislation
Relating to the Prevention and Control of Disease**

Changes in membership

Member	Relevant date
Hon Kenneth LAU Ip-keung, BBS, MH, JP	Up to 15 May 2020