



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref.: FH CR 4/3231/96
Your Ref.: LS/S/26/19-20

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Mr Alvin Chui
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Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

Dear Mr Chui,

**Prevention and Control of Disease (Requirements and Directions)
(Business and Premises) Regulation (L.N. 31 of 2020)
Prevention and Control of Disease (Prohibition on Group Gathering)
Regulation (L.N. 32 of 2020)**

Thank you for your letter of 3 April 2020 regarding L.N. 31 of 2020 (Cap. 599F) and L.N. 32 of 2020 (Cap. 599G). In consultation with the Department of Justice, our reply per the queries raised is set out below –

L.N. 31 of 2020

Section 3

Meaning of catering business

“Catering business” is not defined in L.N. 31, Cap. 599 or the Interpretation and General Clauses Ordinance (Cap. 1). These words should be accorded with its ordinary meaning in the dictionary with due regard to the context in which it appears. According to Oxford English Dictionary, “cater” means “to provide a supply of food for” and “business” bears a wide definition

including “action which occupies time and demands attention and effort; serious occupation or work, as opposed to pleasure or recreation; an activity or matter that someone is engaged in, or with which he or she is concerned at a particular time; a person's official or professional duties as a whole; one's regular, habitual, or stated profession, trade, or occupation”. The Court of Final Appeal has provided further guidance on the meaning of “business” in the case *Lee Yee Shing v Commissioner of Inland Revenue (2008) 11 HKCFAR 6*. It was held that the question whether something amounted to the carrying on of a business was a question of fact and degree to be answered by the fact-finding body upon a consideration of all the circumstances. Generally, the court has adopted the fundamental notion of the exercise of an activity in an organised and coherent way and one which is directed to an end result. Whether an act / activity would fall within the meaning of “catering business” has therefore to be decided based on the facts and circumstances in each case, having regard to the object of the regulation and the exclusion of certain catering business set out in section 3(3) of L.N. 31.

Closing an area adjacent to the premises of business

Section 3(1)(b) of L.N. 31 requires that “[a] person responsible for carrying on a catering business must, during a period specified by the Secretary for Food and Health under section 4(1) close any premises, or part of the premises, on which food or drink is sold or supplied by the business for consumption on the premises”. Section 3(5) provides that an area adjacent to the premises of the business where seating or tables are made available (whether or not by the business) for customers of the business is to be regarded as part of the premises of the business. The effect of sections 3(1)(b) and (5) is that a person operating a catering business is responsible for “closing” the area adjacent to the catering premises where there are seating or tables, even though they are not made available by him or her.

The word “close” under section 3(1)(b) should be read in context with regard to its ordinary meaning. The word “close” carries, among others, the meaning of “to (cause a business, organization or business arrangement) stop operating”. “Closing” an area therefore does not necessarily mean that the person carrying on the catering business must physically shut down or cordon off the area which may not be under his control. In order for a person operating a catering business to fulfil the duty of “closing” an area adjacent to the premises of his catering business, while he may not have the control or power to stop any person from entering into or staying in the area, he is required to take reasonably feasible steps to prevent people from consuming any food or drink sold or supplied by his catering business inside that area. In this regard, it should be noted that the defence of “reasonable excuse” to any breach of

section 3(1)(b) is available to a person responsible for carrying on a catering business (see section 3(6)).

Section 12

According to section 10 of L.N. 31., “specified premises” means “(a) any premises on which a subject catering business is carried on; or (b) any scheduled premises”. According to section 2, “scheduled premises” means “any premises set out in Part 1 of Schedule 2” which cover the following type of premises-

- (a) amusement game center;
- (b) bathhouse;
- (c) fitness center;
- (d) place of amusement;
- (e) place of public entertainment;
- (f) premises (commonly known as party room) that are maintained or intended to be maintained for hire for holding social gatherings;
- (g) beauty parlour;
- (h) club-house;
- (i) establishment (commonly known as club or nightclub) that is open late into the night, usually for drinking, and dancing or other entertainment;
- (j) karaoke establishment;
- (k) mahjong-tin kau premises; and
- (l) massage establishment.

Part 1 of Schedule 1 of L.N. 31 lists out the catering premises that are not applicable under section 3(1) of the regulation which has included “premises that have been constructed to be used, and are used, as a private dwelling” and would hence exclude residential premises. Moreover, the specified premises, according to their definition or description in section 10 of the regulation, are premises that are used for the carrying on therein of a business, which are by their nature not premises for residential use. Hence, the question of whether an inspector may enter and inspect specified premises which are residential premises without a warrant under section 12(1)(a) should not arise.

Schedule 2

One of the limbs in the definition of “fitness centre” refers to “the provision of advice, instruction, training or assistance on improving physical fitness”. The question of whether a premises used for teaching a particular dance or any activity would fall within this definition has to be decided on a

case by case basis having regard to the nature of the activity and whether it is for improving physical fitness or is only a mere recreational activity (which would fall outside the definition).

L.N. 32 of 2020

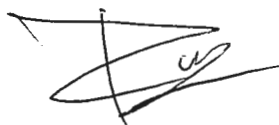
Section 14

Section 11(2) of L.N. 31 provides that an inspector appointed by the Secretary for Food and Health must, if so required, produce written proof of his or her appointment before performing a function under Part 4 of L.N. 31. The performance of a function by an inspector under L.N. 31 would very often entail entry into the relevant premises which may or may not be public place and production of proof of appointment upon request is considered more appropriate for effective performance of the inspector's function in those premises which are not public places.

The reason why there is no similar express provision in L.N. 32 is mainly due to the fact that the subject L.N. regulates group gathering in public places only. It is anticipated that performance of function under L.N. 32 will be carried out mainly in public places which are open to the public. In any event, as a matter of practice, an authorized officer appointed by the Director of Health will carry with him or her the proof of appointment and will, if so required, produce it to demonstrate his or her identity in the course of performing a function under L.N. 32.

For enquiries, please contact me at 3509 8955.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Ronald Ho', written over a horizontal line.

(Ronald Ho)

for Secretary for Food and Health

c.c. Department of Health (Attn.: Dr Alice Wong)
Department of Justice (Attn.: Ms Suzanne Lee and Ms Michelle Chan)