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Paper for the House Committee

**Seventh 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 Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 3) Regulation 2021 (L.N. 102 of 2021) and Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 4) Regulation 2021 (L.N. 103 of 2021).

L.N. 102 and L.N. 103 of 2021

L.N. 102 of 2021

2. L.N. 102 of 2021 amends the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) to add "cruise ship"¹ to Part 1 of Schedule 2 to Cap. 599F as a scheduled premise regulated by Cap. 599F, so as to allow cruise lines to resume "cruise-to-nowhere" ("CTN") itineraries which do not involve ports outside Hong Kong.

L.N. 103 of 2021

3. L.N. 103 of 2021 amends the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) to:

¹ Under L.N. 102 of 2021, cruise ship means a vessel: (a) carrying passengers exclusively for sightseeing or pleasure purposes; (b) plying, along a predetermined route, on any voyage part of which is outside the waters of Hong Kong; and (c) the boarding of which involves passage through immigration control.

- (a) expressly provide that the Secretary for Food and Health may specify conditions for classifying a person as a qualified person for the purpose of exempted group gatherings by reference to whether a certain proportion of persons participating in the group gathering concerned has met any specified conditions;
- (b) relax the conditions for the exemption for group gatherings during wedding ceremonies, certain meetings² (e.g. annual general meetings/extraordinary general meetings) and religious activities; and
- (c) provide for an additional exempted group gathering, namely group gatherings during certain tours if all the participants meet the conditions specified under paragraph 3(a) above.

Gazettal, commencement and tabling of L.N. 102 and L.N. 103 of 2021

4. L.N. 102 and L.N. 103 of 2021 were published in the Gazette on 22 June 2021 and came into operation on 24 June 2021. They were tabled before the Legislative Council ("LegCo") at its meeting on 23 June 2021 and are subject to negative vetting by LegCo.

The Subcommittee

5. At its meeting on 24 June 2021, the House Committee agreed to refer L.N. 102 and L.N. 103 of 2021 to the Subcommittee for study.

6. The expiry of the scrutiny period of L.N. 102 and L.N. 103 of 2021 has been extended, by a resolution passed at the Council meeting of 14 July 2021, from the Council meeting of 21 July 2021 to the Council meeting of 18 August 2021.

7. The Subcommittee has held one meeting with the Administration to discuss L.N. 102 and L.N. 103 of 2021.

² Such meetings are –

- (a) a meeting of a body that must be held within a specified period in order to comply with any Ordinance or other regulatory instrument that governs the operation of the body or its business; or
- (b) a shareholders' meeting of a company listed on a recognized stock market (as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)) that is held in accordance with any Ordinance or other regulatory instrument that governs the operation of the company or its business.

Deliberations of the Subcommittee

Enforcement of Cap. 599F

Resumption of "cruise-to-nowhere" itineraries

8. According to the Administration, under the "vaccine bubble" concept³ and subject to strict compliance with all relevant statutory and administrative requirements in respect of infection control by the Administration, including a set of cruise-specific health protocols, cruise lines can resume CTN itineraries starting from the end of July 2021 at the earliest. Some members enquire how to differentiate a cruise ship for CTN itineraries from a pleasure vessel. They also ask whether passengers on board a cruise ship for CTN itineraries, be it within or outside Hong Kong waters, would be subject to the social distancing measures imposed under the relevant subsidiary legislation of the Prevention and Control of Disease Ordinance (Cap. 599). There are also concerns about the arrangements to be made for passengers if there is a suspected case of COVID-19 on board a cruise ship during the journey. The Administration is also requested to relax the requirement that passengers must present a negative result of a COVID-19 polymerase chain reaction-based nucleic acid test ("COVID-19 test") the sample of which must be taken within 48 hours prior to boarding by extending the duration to 72 hours.

9. The Administration has advised that, under Cap. 599F, a cruise ship is different from a pleasure vessel in that the boarding of the former involves passage through immigration control. Facilities in a cruise ship are required to meet all relevant infection control requirements imposed on similar premises, e.g. a fitness centre on a cruise ship should meet the relevant infection control requirements imposed on fitness centres under Cap. 599F. If a cruise ship has provided passengers with a contact tracing device, then passengers would only need to scan the "LeaveHomeSafe" QR code prior to boarding the cruise ship and would not need to scan the QR code before entering a facility therein where a requirement in relation to "LeaveHomeSafe" is applicable. If passengers are not provided with a contact tracing device, scanning the "LeaveHomeSafe" QR code before entering relevant facilities in the cruise ship is required. Since Cap. 599F does not apply on high seas, cruise lines operating CTN itineraries must sign an undertaking on their due compliance with the directions issued under Cap. 599F in respect of relevant facilities and the aforementioned health protocols at all times throughout CTN itineraries, including when the cruise

³ At the initial stage of resumption of cruise operation, all crew members and passengers aged 16 or above of the cruise-to-nowhere itineraries must be fully vaccinated, except for those who are unfit to receive COVID-19 vaccination on medical grounds with medical proof or due to age, before commencement of a cruise journey.

ships are outside Hong Kong waters. So far two cruise lines have signed the undertaking with the Administration, one of which will resume operation in late July 2021. According to the undertaking already signed by the cruise operators, the Administration has the full discretion to suspend any or all CTN itineraries due to any non-compliance by a single cruise operator or the cruise industry in general. The Tourism Commission is responsible for enforcing Cap. 599F on a cruise ship and will take various measures to ensure compliance with relevant infection control requirements on a cruise ship.

10. The Administration has further advised that under general circumstances, when there is a suspected COVID-19 case on board a vessel travelling into Hong Kong, the vessel concerned would be required to proceed to quarantine anchorage and allow the Port Health Division of the Department of Health ("DH") to carry out investigation before letting passengers leave the ship. The Administration will work out details of the testing and quarantine arrangements in this regard. Regarding the proposed extension of time allowed for passengers of CTN itineraries to take the COVID-19 test, the Administration has explained that since it is the first time to resume cruise operation over the past year or so, a prudent approach should be adopted. The arrangement may be reviewed after experience has been gained from the resumption of cruise operation.

Enforcement of Cap. 599G

Relaxation of restrictions of certain exempted group gatherings

11. For a group gathering during a wedding ceremony, a certain meeting⁴ or a religious activity held at a place of worship, Cap. 599G (as amended by L.N. 103 of 2021) relaxes the restriction on the number of participants of such gathering to 50% of the number of persons that may normally be accommodated on the premises as a place for wedding ceremony or meeting, or a place of worship. Given that the maximum number of persons allowed in cinemas, performance venues and spectator stands at sports venues has already been relaxed to 85% of the normal capacity of the premises, the Administration has been asked to explain the rationale for the lower extent (i.e. 50%) of relaxation.

12. Furthermore, the amended Cap. 599G also relaxes the restriction on the number of participants of a group gathering during a wedding ceremony, a certain meeting⁵ or a religious activity to 100% of the number of persons that may normally be accommodated on the premises as a place for wedding

⁴ See Footnote 2 above for the definition of such meeting.

⁵ Ibid.

ceremony or meeting, or a place of worship, provided that each of the participant in the gathering is a qualified person according to the conditions specified by the Secretary for Food and Health, which is at least two-thirds of the participants of the group gatherings concerned have received the first dose of COVID-19 vaccine. Questions have been raised about enforcement in this regard, including the number of enforcement actions taken against such group gatherings and the number of cases of non-compliance with the vaccination requirements etc. as well as whether the Administration will verify with the operators of the premises on compliance with the vaccination requirement. The Administration is also requested to seek the help of religious leaders to encourage believers to get vaccinated.

13. Regarding the difference in the extent of relaxation for different premises/activities mentioned in paragraph 11 above, the Administration has explained that the extent of relaxation of the restriction on group gatherings is determined having regard to, inter alia, previous restrictions on those types of group gatherings. Under the new direction of fighting the pandemic announced in April 2021, it would refrain from imposing one-size-fits-all restrictions on group gatherings and premises regulated under Cap. 599F when adjusting the social distancing measures. It has also advised that, while figures on enforcement actions in respect of the aforementioned group gatherings (including statistics on cases of non-compliance) are not yet available, in general, regarding premises or group gatherings to which vaccination requirements are applicable, enforcement actions have to be carefully planned as participants of the group gatherings or patrons/users of premises may go in and out of the premises concerned. Decoy operations may need to be conducted for enforcement purposes. Regarding promotion of vaccination, Government bureaux will liaise with their respective stakeholders to encourage vaccination, of which religious organizations are among the Home Affairs Bureau's key stakeholders. It is believed that promotion of vaccination by influential persons is in general an effective way to boost vaccination rate.

Exempted group gathering for a tour of not more than 100 people

14. Cap. 599G (as amended by L.N. 103 of 2021) provides for an additional exempted group gathering for a tour of not more than 100 persons organized by a licensed travel agent under the Travel Agents Ordinance (Cap. 218) and registered with the Travel Industry Council of Hong Kong, in which each of the participants of the tour is a qualified person except when taking place at any premises in relation to which a direction under Cap. 599F is in force. A question has been raised as to whether such exemption would apply to a group gathering of a tour of 300 persons which has been divided into three tours each of 100 persons.

15. The Administration has advised that it will consider the actual circumstances of the group gathering in question for determining whether it constitutes a group gathering for a tour of 300 persons, which is not an exempted group gathering, or three group gatherings each for a tour of 100 persons, which are exempted group gatherings. The factors for consideration include, inter alia, whether the three tours have interactions during the journey and whether the itineraries of these tours are identical.

Border control measures

Measures to prevent importation of cases

16. Arising from the recent three confirmed cases involving persons working in the Hong Kong International Airport ("HKIA") and a designated quarantine hotel, some members have expressed grave concern about whether there are loopholes in the measures to prevent importation of cases. In this connection, they ask about the vaccination status of the confirmed cases and request the Administration to tighten the measures to prevent the importation of cases, such as requiring staff members working at HKIA and designated quarantine hotels to get vaccinated and obtain positive antibody test result, and improving the flight suspension mechanism.

17. The Administration has pointed out that of the three confirmed cases concerned, two persons work at HKIA and one works at a designated quarantine hotel. One of the persons working at HKIA received the first dose of COVID-19 vaccine (Comirnaty vaccine) on 1 July 2021 and the other two persons have not received COVID-19 vaccination. DH is conducting an epidemiological investigation of the person who has received the first dose of vaccination, who is the most recently infected case among the three confirmed cases, to see if there is a transmission link. If the source of infection is found to be HKIA, DH will review the flow of work of the person concerned to see if there is any room for improvement in relation to infection control. The Administration noted that Airport Authority ("AA") has imposed a requirement (which will take effect from 1 August 2021) that all employees who enter the restricted area of HKIA must show either a certificate of vaccination or a certificate of negative results of a COVID-19 test taken within 14 days. The Administration has been reviewing the anti-epidemic measures on a regular basis. The compulsory quarantine period for fully-vaccinated persons who arrive at Hong Kong from relatively low-risk countries and with a positive result of serology testing for antibodies has been shortened. Such adjusted measure is to implement the interim recommendations of the Scientific Committee on Vaccine Preventable Diseases and the Scientific Committee on Emerging and Zoonotic Diseases joined by the Chief Executive's expert advisory panel. The Administration will adjust the quarantine and testing requirements for persons arriving from

overseas upon close monitoring of the epidemic situation in places outside Hong Kong. In this connection, in view of the recent epidemic development in Russia, the Administration has tightened the quarantine requirements for persons arriving therefrom.

Cross-border travels between Mainland and Hong Kong

18. Some members ask about the details of the Chief Executive's submission of a report to the Central Government seeking resumption of cross-border travels between the Mainland and Hong Kong. They hope that cross-border travels between the Mainland and Hong Kong could be resumed as soon as possible. They consider that the travellers concerned should be fully vaccinated with valid positive antibody test result. If a quota is set on the number of travellers, priority should be given to people who are waiting for family reunion and business travellers. These members also call on the Administration to consider allowing Mainland people to travel to Hong Kong for tourism. The Administration is also requested to establish a mechanism with the Mainland authorities for suspension of cross-border travels, so that sporadic cases with low transmission risks will not affect resumption of cross-border travels.

19. The Administration has advised that it does not have on hand details of the said report. In the discussion between the Hong Kong Special Administrative Region Government and the Mainland authorities on resumption of cross-border travels, consideration will be given to the setting of a quota, the places covered and conditions (e.g. travellers being fully vaccinated, travel for family reunion or business needs) for such resumption. It will also discuss with the Mainland authorities a mechanism for resumption and suspension of cross-border travels.

Hong Kong-Singapore Air Travel Bubble

20. Given that the Singaporean Government has recently changed its infection control strategy regarding notifications of confirmed cases, some members enquire whether the Administration will continue its discussion with the Singaporean Government regarding the Hong Kong-Singapore Air Travel Bubble arrangement. The Administration has advised that it will adopt a prudent approach to the discussion.

Vaccination

Boosting vaccination rate

21. Several members urge the Administration to draw up a timetable and road map for boosting the rate of COVID-19 vaccination. They consider that

boosting vaccination rate by mere encouragement is not sufficient. Instead, the Administration should require civil servants, staff of subvented organizations, AA, Hospital Authority ("HA"), schools and institutions providing care services to receive vaccination to protect themselves and other people. As regards the arrangement whereby civil servants who have been vaccinated before the implementation of vaccination leave will also be eligible for such type of leave, the Administration is requested to make similar arrangement for staff of Government contractors.

22. The Administration has advised that it is optimistic about the vaccination rate. About 2.7 million people have received the first dose of COVID-19 vaccine. Nevertheless, it will review the arrangement for vaccination with a view to boosting the vaccination rate. It will not require but encourage members of the public to get vaccinated. HA is providing incentives to encourage more staff members to receive vaccination. The current vaccination rate of HA doctors is about 80% and HA nurse is about 45% and both rates are on the rise. Universities have developed their own vaccination requirements on vaccination for students to use universities' facilities, such as accommodation. DH would offer views on vaccination to the Education Bureau if it plans to resume full-day class teaching. The Administration has taken the lead in providing vaccination leave for its employees and hopes other trades will follow.

Vaccination records in "LeaveHomeSafe" App

23. Given that vaccination records can be stored in more than one "LeaveHomeSafe" ("LHS") accounts since the procedure for storing vaccination records does not involve identity authentication, concerns have been raised on the use of other people's vaccination records. There was a suggestion that the Administration might consider only allowing vaccination records to be stored in the eHealth App or the iAM Smart App, which is unique to the individual concerned, to address the concerns.

24. The Administration has pointed out that with powers conferred under Cap. 599F, it has conducted inspections but no violation has been identified in relation to using others' vaccination records. While the operators of the relevant catering premises and scheduled premises use the QR Code Verification Scanner App ("eVT App"), authorized officers have their own tool (i.e. Scanner App with more functions) to check compliance with the vaccination requirements, including enforcing against an individual using another person's vaccination record. Also, the Administration has been updating the eVT App in the light of new development. For example, members of the public can now display their vaccination record QR codes via the eHealth App; and after operators have updated their eVT App, they could use it to scan those vaccination record QR codes as well. Mindful of

the user-friendliness of the measure, the Administration is inclined to provide more choices of platforms for members of the public to store their vaccination records (e.g. paper vaccination record, image stored in photo album or gallery of a mobile device, eHealth App, iAM Smart App and LHS).

Mask-wearing requirement

25. A question has been raised on whether fully vaccinated persons in sports premises could be exempted from the mask-wearing requirement. The Administration has explained that for the relevant part of indoor sports premises where all staff and users have been fully vaccinated, users are exempted from wearing masks when exercising in that part of the premises.

Closure of sauna facilities

26. Given that bath-houses have resumed operation, some members enquire whether sauna facilities can be reopened if staff members and customers have been vaccinated. The Administration has explained that the social distancing measures of bath-houses have been relaxed; however, sauna facilities of bath-houses will continue to be closed in line with sauna facilities of other scheduled premises. The Administration needs to be prudent in considering their re-opening, as sauna facilities involve higher health risks.

Recommendation

27. The Subcommittee raises no objection to L.N. 102 and L.N. 103 of 2021 and will not propose any amendment to them.

Advice sought

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