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**Paper for the House Committee**

**Eighth 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 eight items of subsidiary legislation in relation to border control measures, contact tracing and requirements on disclosure of information, social distancing measures as well as compulsory testing made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) with regard to the latest situation of public health emergency relating to coronavirus disease 2019 ("COVID-19") ("the eight items of subsidiary legislation").

**The eight items of subsidiary legislation**

Items of subsidiary legislation in relation to border control measures, contact tracing and requirements on disclosure of certain information, social distancing measures, and compulsory testing

2. The eight items of subsidiary legislation extend the expiry dates of the public health emergency regulations ("emergency regulations") in relation to border control measures, contact tracing and requirements on disclosure of information, social distancing measures as well as compulsory testing as detailed below:

L.N. number	Title of subsidiary legislation	Relevant public health emergency regulation	Original expiry date of public health emergency regulation	Extended expiry date
Items of subsidiary legislation in relation to border control measures				
139 of 2021	Compulsory Quarantine of Certain Persons Arriving at Hong Kong (Amendment) (No. 2) Regulation 2021	Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C) <sup>1</sup>		
141 of 2021	Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places (Amendment) (No. 2) Regulation 2021	Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E) <sup>2</sup>	Midnight on 30 September 2021	Midnight on 31 March 2022
144 of 2021	Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) (Amendment) (No. 2) Regulation 2021	Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (Cap. 599H) <sup>3</sup>		

<sup>1</sup> In gist, Cap. 599C requires a person arriving at Hong Kong from a place in China other than Hong Kong to be placed under compulsory quarantine for a period specified by the Secretary for Food and Health ("SFH") (which must not exceed 28 days) from the date of arrival if the person has stayed during the relevant period in a certain place in China or a certain foreign place specified by SFH immediately before his arrival at Hong Kong.

<sup>2</sup> In gist, Cap. 599E imposes a requirement similar to Cap. 599C except that the person subject to such requirement under Cap. 599E is a person arriving at Hong Kong from a place outside China.

<sup>3</sup> In gist, Cap. 599H provides a mechanism under which regulatory measures may be imposed on cross-boundary conveyances (i.e. aircraft or vessels) arriving (or about to arrive) at Hong Kong from a place outside Hong Kong and certain types of persons on those conveyances.

Item of subsidiary legislation in relation to contact tracing and requirements on disclosure of certain information				
140 of 2021	Prevention and Control of Disease (Disclosure of Information) (Amendment) (No. 2) Regulation 2021	Prevention and Control of Disease (Disclosure of Information) Regulation (Cap. 599D) <sup>4</sup>	Midnight on 30 September 2021	Midnight on 31 March 2022
Items of subsidiary legislation in relation to social distancing measures				
142 of 2021	Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 5) Regulation 2021	Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) <sup>5</sup>		
143 of 2021	Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 6) Regulation 2021	Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) <sup>6</sup>	Midnight on 30 September 2021	Midnight on 31 March 2022
145 of 2021	Prevention and Control of Disease (Wearing of Mask) (Amendment) (No. 2) Regulation 2021	Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I) <sup>7</sup>		

<sup>4</sup> In gist, Cap. 599D, amongst other things, empowers a health officer to require a person to give any information that the health officer reasonably believes is within the knowledge, in the possession or under the control of the person, and is relevant to the handling of the public health emergency.

<sup>5</sup> In gist, Cap. 599F imposes certain requirements, and enables directions to be issued by SFH, in respect of any catering business and scheduled premises as set out in Part 1 of Schedule 2 to Cap. 599F.

<sup>6</sup> In gist, Cap. 599G prohibits group gathering of more than a certain number of persons (currently set at four persons) at, among other things, any public place during a period specified by SFH and provides for certain exemptions.

<sup>7</sup> In gist, Cap. 599I requires a person, subject to certain exceptions, to wear a mask at all times while boarding or on board a public transport carrier, or entering or present in an MTR paid area or a specified public place (including, subject to certain exceptions, any place which for the time being the public or a section of the public may or are permitted to have access, whether on payment or otherwise) during a period specified by SFH.

Item of subsidiary legislation in relation to compulsory testing				
146 of 2021	Prevention and Control of Disease (Compulsory Testing for Certain Persons) (Amendment) (No.2) Regulation 2021	Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J) <sup>8</sup>	Midnight on 14 August 2021	Midnight on 31 March 2022

Gazettal, commencement and tabling of L.N. 139 to L.N. 146 of 2021

3. L.N. 139 to L.N. 146 of 2021 were published in the Gazette on 10 August 2021 and came into operation on 11 August 2021. They were tabled before the Legislative Council ("LegCo") at its meeting on 18 August 2021 and are subject to scrutiny by LegCo pursuant to negative vetting by LegCo.

**The Subcommittee**

4. At its meeting on 13 August 2021, the House Committee agreed to refer L.N. 139 to L.N. 146 of 2021 to the Subcommittee for study.

5. The expiry of the scrutiny period of L.N. 139 to L.N. 146 of 2021 has been extended, by a motion moved by the Subcommittee Chairman and passed at the Council meeting of 8 September 2021, from the Council meeting of 15 September 2021 to the Council meeting of 6 October 2021.

6. The Subcommittee has held one meeting with the Administration to discuss L.N. 139 to L.N. 146 of 2021.

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<sup>8</sup> In gist, Cap. 599J introduces a mechanism for specified medical practitioners to issue written directions to require persons clinically suspected to have contracted COVID-19 to undergo a test for ascertaining whether the person has contracted COVID-19 ("specified test"); for SFH to issue compulsory testing notices to require certain categories or descriptions of persons to undergo a specified test; and for SFH to make a restriction-testing declaration in relation to any premises under which certain persons who are on the premises or who enter the premises during the effective period of such a declaration will be subject to exit restrictions and may be required to undergo a specified test during the effective period.

## **Deliberations of the Subcommittee**

### Border control measures

#### *Scope of Cap. 599C*

7. According to paragraph 21 of the LegCo Brief (no file reference) issued by the Food and Health Bureau in August 2021, since the introduction of Cap. 599C<sup>9</sup> in early February 2020, its provisions have been enhanced by, among others, expanding the scope to cover returnees from the entire China (i.e. the Mainland, Macao and Taiwan). Considering that the quarantine requirements under Cap. 599C are stringent and given that the Administration has introduced the Come2hk Scheme recently, some members ask the Administration to consider whether Cap. 599C could be amended to provide more flexibility such that it would not cover the entire China.

8. The Administration explains that the Return2hk Scheme and the Come2hk Scheme are schemes which aim to facilitate travelling between Hong Kong, Macao and the Mainland under a quota system on the premise that the epidemic situation in these places is stable and under control. Existing provisions of Cap. 599C already provide flexibility to implement both schemes. The Administration will regularly review the measures put in place under Cap. 599C and adjust them as and when situation warrants.

#### *COVID-19 tests for participants of Come2hk Scheme*

9. Noting that participants of the Come2hk Scheme who are non-Hong Kong residents are required to undergo a COVID-19 test for six times after arrival at Hong Kong, some members quote press reports that in the recent outbreak of the Delta variant of COVID-19 in the Fujian Province, there is a confirmed case in which the infected person has been tested negative in nine COVID-19 tests. These members therefore question whether the number of tests for participants of the scheme is sufficient given the aforesaid case and the long incubation period of the variant strain of COVID-19.

10. The Administration advises that non-Hong Kong residents who have stayed in any medium or high risk areas in the Mainland could not come to Hong Kong under the Come2hk Scheme. So far, there has not been any confirmed case of people coming to Hong Kong from the Mainland under Cap. 599C. The Department of Health ("DH") is aware of confirmed cases in the Mainland through communication with the Mainland health authorities. The Administration considers the current arrangements of the

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<sup>9</sup> See Footnote 1 for a gist of Cap. 599C.

Come2hk Scheme appropriate. It will continue to monitor the epidemic situation and take relevant measures as and when necessary.

*Arrangement for Hong Kong people in quarantine to visit elderly relatives who are critically ill in hospitals*

11. A question is raised on whether there is a special arrangement to facilitate vaccinated Hong Kong people, who have returned from overseas and are in quarantine, to visit elderly relatives who are critically ill in hospitals. The Administration is requested to provide information on the unit under DH which is responsible for such matter.

12. According to the Administration, such special arrangement could be made with conditions, including the provision of documentary proof issued by the relevant hospital on the condition of the patient concerned, relationship proof, permission of the visit by the hospital concerned and implementation of sufficient infection control measures for the visit. The matter is under the purview of the Emergency Response and Programme Management Branch of DH.

*Health code system for Hong Kong to facilitate reopening the border*

13. Some members urge the Administration to introduce a health code system into Hong Kong to facilitate reopening the border. If it is infeasible to introduce such system at the moment, the Administration is requested to consider incorporating a function similar to a health code into the "LeaveHomeSafe" mobile application.

14. The Administration advises that it has been developing the relevant electronic tools such as a health code as a measure for cross-border travels and exploring with the Mainland authorities on the requirements for a health code.

*Criteria for classification of overseas places into three groups*

15. Regarding an enquiry on the criteria for classification of overseas places into three groups for infection control, the Administration explains that overseas places are categorized into three groups taking into account a basket of factors, including public health risk considerations (such as epidemic situation in particular places as indicated by a 7-day moving average of daily global confirmed cases, testing rate, vaccination rate, volume of travellers and actual imported cases), as well as other local socio-economic factors.

*Feasibility of quarantine exemption for pilots*

16. A member points out that since more places are categorized as Group A high-risk specified places, more pilots are required to undergo compulsory quarantine for 21 days or 14 days even if they are vaccinated. The aviation sector has reflected that there will be a shortage of pilots during peak season due to the lengthy compulsory quarantine period. The Administration is therefore requested to exempt pilots from quarantine if other stringent infection control measures have been implemented for them including minimizing contact with the public.

17. The Administration advises that it will explore the feasibility of granting such exemption having regard to the public health risk and the needs of the trade.

*Proof on recovery from previous infection for persons arriving at Hong Kong*

18. There is a concern about a case where a Hong Kong resident, who has been recovered from COVID-19 in the United Kingdom ("UK") without hospitalization, could not obtain a medical proof on his/her recovery from previous infection, which has then hindered him/her from returning to Hong Kong during his/her flight transit in Dubai. Some members consider that such lack of proof on recovery will be more prevalent because the governments of many overseas countries adopt living with the virus as their approach to COVID-19 and hence persons infected might not be hospitalized nor consult doctors for treatment. These persons therefore do not have documentary proof on their recovery from previous infection. The Administration is therefore requested to review the current documentation requirements on persons arriving at Hong Kong from overseas countries to address the issue of such lack of proof on recovery.

19. The Administration explains that persons arriving at Hong Kong from overseas countries are subject to the requirements under Cap. 599E<sup>10</sup> and Cap. 599H.<sup>11</sup> Both UK and Dubai are Group A specified places. Under the current arrangements, persons who have stayed in Group A specified places on the day of boarding for/arrival at Hong Kong or during the 21 days before that day can only board flights for Hong Kong if they are Hong Kong residents who are fully vaccinated<sup>12</sup> and hold a recognized vaccination record, and fulfill the boarding and quarantine requirements. For travellers

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<sup>10</sup> See Footnote 2 for a gist of Cap. 599E.

<sup>11</sup> See Footnote 3 for a gist of Cap. 599H.

<sup>12</sup> Fully vaccinated means all recommended dosage has been administered in accordance with the relevant guidelines of a COVID-19 vaccination course at least 14 days prior to arrival at Hong Kong.

who have recovered from previous COVID-19 infection, they will be required to receive one dose of a COVID-19 vaccine in order to be considered as fully vaccinated. In order to verify whether travellers have fulfilled the vaccination requirement before boarding, airlines will require the relevant travellers who have received one dose of vaccine to provide proof on their previous COVID-19 infection. The case mentioned in paragraph 18 above has been settled as the traveller concerned is able to produce a documentary proof issued by the National Health Service of UK eventually.

*Recognition of vaccination records*

20. There are concerns that over one hundred Hong Kong people have been stranded in Cambodia, which is a Group A specified place, and are unable to return to Hong Kong because their vaccination records are not recognized by the Hong Kong Special Administrative Region ("HKSAR") Government. The Administration is requested to inform members of the progress of discussion between the HKSAR Government and the Consulate of Cambodia in Hong Kong on the matter to facilitate their returning to Hong Kong. The Administration is also requested to provide information on the number of Hong Kong people being stranded in overseas countries due to lack of a recognized vaccination record.

21. The Administration explains that as pointed out in paragraph 19 above, holding recognized vaccination records is one of the prerequisites for Hong Kong residents who have stayed in Group A specified places to board a flight for Hong Kong. The Administration is working on reaching an agreement with the relevant authority or recognized institution of a country on recognition of their vaccination records. The Administration also advises that it does not have the information sought in paragraph 20 above.

*Vaccination requirement for inbound travellers*

22. Currently, inbound travellers from Group B medium-risk specified places and Group C low-risk specified places are not required to receive vaccination. A question is raised on whether the Administration will consider imposing such a requirement. The Administration is also requested to provide information on the respective numbers of confirmed cases involving inbound travellers from these two groups of places from 1 to 14 September 2021.

23. The Administration explains that given the lower public health risks, there is no vaccination requirement for inbound travellers from Group B medium-risk specified places (for Hong Kong residents) and Group C low-risk specified places (for both Hong Kong residents and non-Hong Kong residents). However, unvaccinated arrivals from those places are subject to



longer duration of compulsory quarantine and frequent testing requirements. The Administration considers the current arrangement appropriate but will keep in view the feasibility of imposing such vaccination requirement. It has also advised that from 1 to 14 September 2021, there were nine imported cases involving persons who have stayed at Group B specified places only, and no imported case involving persons who have stayed at Group C specified places.

*Flight suspension mechanism*

24. On the question of whether the flight suspension mechanism has been reviewed regularly to see if there is any room for improvement, the Administration points out that adjustments have been made to the mechanism by upgrading some countries to a higher-risk group on a risk-based approach. The Administration will continue to review the mechanism regularly.

*COVID-19 test for passengers of "cruise-to-nowhere" itineraries*

25. Currently, passengers of "cruise-to-nowhere" itineraries are required to present a negative result of a COVID-19 polymerase chain reaction-based nucleic acid test the sample of which must be taken within 48 hours prior to boarding. Given that the operation of "cruise-to-nowhere" itineraries has been smooth after their resumption since end-July 2021, there is a suggestion that a timetable should be set to review whether the duration requirement could be relaxed to 72 hours, with a view to providing convenience to passengers.

26. According to the Administration, the shorter the duration of the testing prior to boarding, the more reliable the testing results would be. While there is no timetable for reviewing the testing requirements for passengers, the Administration will consider relaxation when there is sufficient evidence that it is safe to do so.

Social distancing measures

*Feasibility of relaxation of restrictions applicable to group gatherings and event premises*

27. Currently, for cinemas and performance venues, the current maximum number of customers allowed in the premises is 85% of the normal capacity/the seating capacity. However, tours and the two types of activities held at "event premises" under Cap. 599F<sup>13</sup> (i.e. wedding ceremonies and business meetings held in order to comply with any Ordinance or other

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<sup>13</sup> See Footnote 5 for a gist of Cap. 599F.

regulatory instrument such as annual general meetings) are required to operate with more stringent caps (i.e. 30 persons for tours and 50% of the normal capacity of the premises for the latter two types of activities). These caps are subject to a further relaxation (i.e. 100 persons for tours and 100% of the aforesaid normal capacity of event premises for the latter two types of activities) on the premise that at least two-thirds of the participants/visitors/guests/spectators have received the first dose of COVID-19 vaccine. Since the local epidemic situation has become stable, the Administration has been requested to consider further relaxing the restrictions imposed on tours, wedding ceremonies and business meetings. Concern is also raised on whether the Administration will adjust the cap on the number of persons allowed in a group gathering in a public place under Cap. 599G<sup>14</sup> as the cap on such group gathering has not been amended for some time even though the local epidemic situation has become stable. There is also an enquiry on whether the closing time of a certain type of clubhouse ("聯誼會/會所") with mahjong facilities could be extended given the stable epidemic situation.

28. The Administration explains that various government bureaux have been reviewing the restrictions applicable to different premises/group gatherings under their respective purview having regard to, inter alia, the current local epidemic situation and the views of the trades. Specifically, the Administration will study if there is any room to relax the current restrictions on local tours. It also points out that whilst keeping the four-person cap on a group gathering in a public place under Cap. 599G, the Administration has relaxed the group gathering restrictions for certain types of activities at which more participants may be allowed. The Food and Health Bureau would continue to liaise with the relevant government bureaux and study whether the certain restrictions could be relaxed while minimizing the risk of transmission during the relevant activities.

#### *Enforcement actions*

29. Enquiries are made on the number of inspections and prosecutions respectively on compliance with requirements in the directions made under Cap. 599F, including scanning the "LeaveHomeSafe" QR code or completing the relevant record form in lieu before entering catering premises.

30. According to the Administration, citing the Food and Environmental Hygiene Department ("FEHD") as an illustration, FEHD has been taking stringent enforcement actions against non-compliance with anti-epidemic regulations by stepping up inspections in various districts including

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<sup>14</sup> See Footnote 6 for a gist of Cap. 599G.

conducting joint operations with the Police. These include targeting operators of catering premises in non-compliance with the requirements under "vaccine bubble". Over the weekend between 10 and 12 September 2021, FEHD (including joint operations conducted with the Police) inspected 1 447 catering premises in the Central and Western District, Wan Chai District, Yau Tsim Mong District and Sha Tin District, and the two departments initiated procedures on prosecution againsts 19 operators of catering premises under Type B, Type C<sup>15</sup> or Type D<sup>16</sup> Modes of Operation or bars/pubs suspected of breaching the requirements of Cap. 599F, and required these premises to take corresponding measures for reducing the risk of transmission.<sup>17</sup> The conditions under which these catering premises may operate were required to be rolled-back for three, seven or 14 days as applicable, while bars/pubs were required to be closed for 14 days. Fixed penalty notices ("FPNs") were issued by FEHD to three staff members, two of them for breaching the vaccination requirement and the remaining one for breaching the regular testing requirement. FPNs were also issued by the two departments to 24 customers, 15 for breaching the "LeaveHomeSafe" requirements and 9 for breaching the vaccination requirements when in Designated Zone D of catering premises or in bars/pubs. In addition, the relevant government department also took enforcement actions including issuing FPNs in the same period.

31. Regarding statistics on the overall enforcement actions, the Administration points out that for catering businesses under Cap. 599F, between 28 March 2020 and 13 September 2021, FEHD carried out inspections of catering premises for 436 501 times and its cooked food hawker and market stalls for 512 196 times; and initiated procedures on prosecution against 1 593 cases<sup>18</sup> and issued 18 FPNs. As regards rolled-back cases –

Rolled-back period <sup>19</sup>	Catering premises	FEHD's cooked food hawker and market stalls
3 days	204	2
7 days	152	14
14 days	71	-

<sup>15</sup> The current number of such premises is 2 332 (as at 9 September 2021).

<sup>16</sup> The current number of such premises is 1 150 (as at 9 September 2021).

<sup>17</sup> Under these rolled-back measures, catering premises have to, from the subsequent day after the irregularities were identified by the enforcement officers, cease selling or supplying food or drink for consumption on the premises after 6 p.m., and allow no more than two persons to be seated together at one table, for three, seven or 14 days, while bars/pubs are required to be closed for 14 days.

<sup>18</sup> Each prosecution may involve breaches of multiple items.

<sup>19</sup> See Footnote 17 for a gist of the rolled-back measures.

For Cap. 599G (group gathering) and Cap. 599I (mask wearing)<sup>20</sup>, FEHD took enforcement actions against catering premises, its cooked food hawker and market areas and other (non-cooked-food) hawker and market areas as well. Between 28 March 2020 and 13 September 2021 –

Ordinance	Fixed penalty tickets issued by FEHD	Procedures on prosecution initiated by FEHD (cases)
Cap. 599G	111	5
Cap. 599I	712	29

### COVID-19 test

32. Concern is raised on whether follow-up COVID-19 tests have been arranged for persons recovered from COVID-19 infection and the number of reinfection cases.

33. The Administration advises that currently, persons confirmed to have contracted COVID-19 are subject to close medical supervision and frequent testing during hospitalisation. They will not be discharged from the hospital unless they have fully met the Hospital Authority's discharge criteria. They are not subject to further compulsory testing after being discharged. As of 15 September 2021, among all the confirmed cases of COVID-19 in Hong Kong, only one reinfection case (case number #564) has been reported which involves a 33-year-old male patient. He was first infected in late March 2020 and was discharged from hospital in mid-April 2020 after being tested negative for the virus twice. Subsequently, he travelled to Spain via London of UK in early August 2020. He was tested positive again upon arrival at the Hong Kong International Airport in mid-August 2020.

### **Recommendation**

34. The Subcommittee raises no objection to L.N. 139 to L.N. 146 of 2021 and will not propose any amendment to them.

### **Advice sought**

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

Council Business Division 4  
Legislative Council Secretariat  
28 September 2021

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<sup>20</sup> See Footnote 7 for a gist of Cap. 599I.