



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/S/34/20-21
電話 TELEPHONE : 3919 3508
電郵 EMAIL : vkfcheng@legco.gov.hk

By email (ellenchan@fhb.gov.hk)
4 May 2021

Ms CHAN Sheung-man, Ellen
Principal Assistant Secretary for
Food and Health (Health) 7/
Head (Chinese Medicine Unit)
Food and Health Bureau
Health Branch, Team 7/Chinese Medicine Unit
19/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Ms CHAN,

**Prevention and Control of Disease (Requirements and Directions)
(Business and Premises) (Amendment) (No. 2) Regulation 2021
(L.N. 52 of 2021)
and
Prevention and Control of Disease (Prohibition on Group Gathering)
(Amendment) (No. 3) Regulation 2021
(L.N. 53 of 2021)**

We are scrutinizing the legal and drafting aspects of L.N. 52 and L.N. 53 and should be grateful for your clarification on the following matters:

L.N. 52

Sections 6 and 9

1. Under the new sections 7AA(1) and 9AA(1) of the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F), a person who enters, or is present on, any catering business premises and scheduled premises, must comply with any direction issued by the Secretary for Food and Health ("Secretary") under sections 6(1) and 8(1) of Cap. 599F that applies in relation to the person. A person who

contravenes the new section 7AA(1) or 9AA(1) commits an offence and is liable on conviction to a fine at level 3 (i.e. \$10,000) (sections 7AA(2) and 9AA(2)). It is noted that failure to provide records, documents or information required under the Secretary's directions would constitute non-compliance with those directions and hence would be an offence under Cap. 599F (see paragraph 10 of the Legislative Council Brief (without file reference number) issued by the Food and Health Bureau in April 2021).

2. Given that a person's right to privacy is guaranteed by Article 39 of the Basic Law and Article 14 of the Bill of Rights under the Hong Kong Bill of Rights Ordinance (Cap. 383), please advise whether any directions in relation to the production of record, document or information (e.g. the medical certificate as required under G.Ns. (E.) 249 and 250 published in the Gazette on 28 April 2021) under sections 7AA(1) and 9AA(1) could satisfy the four-step proportionality test as laid down in the case of *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372.

L.N. 53

Section 7

3. Under the new sections 5C(2) and 5D(2) of the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G), if a specified participant of a qualified persons' gathering or a staff member participant of a tour gathering is not a qualified person; or fails to comply with a requirement made by the organizer of the gathering under the new sections 5C(1)(a) and 5D(1)(a) (including a requirement to provide any record, document or information proving that the participant is a qualified person), the organizer of the gathering concerned may require the participant not to participate, or to cease to participate, in the gathering. The new sections 5C(3) and 5D(3) provide that if the specified participant or a staff member participant fails to comply with a requirement by the organizer, a police officer may use any force that is reasonably necessary for securing the participant's compliance with the requirement. Please provide examples to illustrate the circumstances under which a police officer may use reasonable force under the new sections 5C(3) and 5D(3).

Section 9

4. Under the new section 7(1B)(b)(ii) and (1C)(b)(ii), it is a defence for a person who is charged with an offence in respect of a prohibited group gathering to establish that the person had taken all reasonable steps to ensure that each of the persons participating in the gathering/each of staff members in the case of tour gathering was a qualified person.

- (a) Please provide examples to illustrate what would constitute "reasonable steps" for the purposes of the new section 7(1B)(b)(ii) and (1C)(b)(ii).
- (b) "Staff member" is defined under the new section 7(3) to mean, in relation to a group gathering, (i) a licensee who organizes the gathering; (ii) an employee of the licensee; (c) an agent or contractor of the licensee; or (iv) an employee of the agent or contractor. As staff member appeared in the new section 7(1C) has been referred to in the context of a tour gathering, please consider whether "group gathering" as referred to in the new section 7(3) should be amended as a "tour gathering" as in the definition of "staff member" under the new section 5A.

We should be grateful if you could let us have your response in both English and Chinese **by noon of 7 May 2021**.

Yours sincerely,



(Vanessa CHENG)
Assistant Legal Adviser

c.c. Department of Justice
(Attn: Miss Elaine NG, SGC & Miss Annet LAI, Acting SGC (for L.N. 52);
Mr Jonathan LUK, SGC and Mr Michael CHOI, GC (for L.N. 53)
(By email: ldd@doj.gov.hk))
Legal Adviser
Senior Assistant Legal Adviser 2
Clerk to Subcommittee