

## St. Petersburg International Legal Forum 9 1/2: Rule of Corona

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### **(I) Introduction**

1. Distinguished colleagues, ladies and gentleman. Greetings from the Hong Kong Special Administrative Region.
2. As though with the ability to crystal-ball-gaze into an imminent pandemic, the 2019 Annual Report on Global Preparedness for Health Emergencies by the Global Preparedness Monitoring Board reported in September 2019 that “*The world is not prepared for a fast-moving, virulent respiratory pathogen pandemic*”<sup>1</sup>.
3. It is timely that this unique Forum 9 1/2 provides a platform for sharing of experience and indeed to stimulate the speedy actions to work in solidarity to fight the pandemic.
4. Today, I would like to share with you the approach of Hong Kong which may be characterized by four elements - “**recognize**”, “**strategize**”, “**legalize**” and “**revitalize**” in tackling the COVID-19 pandemic from the public administration and legislation perspective.

### **(II) “Recognize” – Identify the Risks of COVID-19 at the Early Stage**

5. With the experience of dealing with a few novel infectious diseases in the last two decades, Hong Kong is vigilant in staying alert with onset of any such diseases anywhere in the world. We operate under the three principles of **speed, rigour and transparency**<sup>2</sup>.

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<sup>1</sup> See Global Preparedness Monitoring Board, 2019 Annual Report on Global Preparedness for Health Emergencies (September 2019), at p.15, available at [https://apps.who.int/gpmb/assets/annual\\_report/GPMB\\_annualreport\\_2019.pdf](https://apps.who.int/gpmb/assets/annual_report/GPMB_annualreport_2019.pdf).

<sup>2</sup> See the Legislative Council Brief on the Prevention and Control of Disease (Amendment) Regulation 2020 and the Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2020 (7 January 2020), available at <https://www.legco.gov.hk/yr19->

6. On 8 January, Hong Kong SAR made legislative amendments to its Prevention and Control of Disease Ordinance<sup>3</sup> (“the Ordinance”), by including “Severe Respiratory Disease associated with a Novel Infectious Agent” in the schedule of “infectious diseases” in the Ordinance<sup>4</sup>. The same amendment has also been made in the list of “specified scheduled infectious diseases” under the subsidiary legislation of the Ordinance to enable certain control measures to be taken<sup>5</sup> immediately.
7. This is an important move because it provides the legal basis for adopting in a timely manner emergency measures for the effective prevention and control of the COVID-19 pandemic in Hong Kong<sup>6</sup>.

(III) **“Strategize” – Prevention and Containment of the Impact of COVID-19 Pandemic**

8. Based on the experience of the 2003 SARS outbreak, the Hong Kong Government adopts a strategy of “containment” with specific measures to achieve **early identification, early isolation and early treatment** of the infected as well as measures to **significantly reduce population mobility and in-population social contacts**<sup>7</sup>.

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[20/english/subleg/brief/2020ln003\\_004\\_brf.pdf](https://www.legco.gov.hk/yr19-20/english/subleg/brief/2020ln003_004_brf.pdf).

<sup>3</sup> The Prevention and Control of Disease Ordinance (Cap. 599 of the Laws of Hong Kong) is available at <https://www.elegislation.gov.hk/hk/cap599>.

<sup>4</sup> See the Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2020.

<sup>5</sup> See the Prevention and Control of Disease (Amendment) Regulation 2020.

<sup>6</sup> See the Legislative Council Brief on the Prevention and Control of Disease (Amendment) Regulation 2020 and the Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2020 (7 January 2020), available at [https://www.legco.gov.hk/yr19-20/english/subleg/brief/2020ln003\\_004\\_brf.pdf](https://www.legco.gov.hk/yr19-20/english/subleg/brief/2020ln003_004_brf.pdf).

<sup>7</sup> See Information Note on the Prevention and Control of Novel Coronavirus Infection in Hong Kong (18 February 2020), available at <https://www.legco.gov.hk/yr19-20/english/counmtg/papers/cm20200219p-e.pdf>.

9. In its fight against the pandemic, the Hong Kong Government makes every decision based on science and justification, with advice from an expert advisory panel, and with the ultimate objective of protecting not only the health of the people of Hong Kong but also the economic and social situation in the city<sup>8</sup>.
10. To implement the “containment” strategy, various measures have to be adopted with a view to cutting off the human-to-human transmission of the virus. There are two perspectives, the control of inbound travellers and the prevention of community outbreak within Hong Kong.
11. Border control measures are devised based on risk assessment of the relevant jurisdictions. They include issuing a compulsory quarantine order to people entering Hong Kong, and later, denying entry of visitors.
12. To prevent community outbreak of COVID-19 in Hong Kong, personal hygiene and social distancing are critical. Directions and regulations were issued to prohibit group gathering of more than four people in public places, restrict the operation and also the method of operation of catering and other businesses that may pose a risk of spreading the disease.
13. To supplement the effectiveness of these measures, the enhanced laboratory surveillance programme and contact tracing measures conducted by the Centre for Health Protection are equally pivotal. This will facilitate tracing of close contact of confirmed cases, and importantly identify the source of infection.

**(IV) “Legalize” – Public Health Emergency Regulations Made under the Prevention and Control of Disease Ordinance**

14. Given that the relevant measures may affect the legal rights of the community and requires effective enforcement, they need to be supported by the legal framework of the jurisdiction. This brings us to the important topic of “**legalize**”.

*The Public Health Emergency Framework under the Prevention and Control of Disease Ordinance*

15. From a historic perspective, “legalization” of public health emergency measures

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<sup>8</sup> See [https://www.news.gov.hk/eng/2020/03/20200303/20200303\\_110438\\_328.html](https://www.news.gov.hk/eng/2020/03/20200303/20200303_110438_328.html).

can in fact be traced to medieval times when Adriatic port city of Ragusa passed the first quarantine legislation in its fight against the Black Death plague in 1377<sup>9</sup>.

16. In the case of Hong Kong, having regard to the experience during the 2003 SARS outbreak and the International Health Regulations (2005)<sup>10</sup> of the World Health Organization (“WHO”), the Prevention and Control of Disease Ordinance with its subsidiary legislation<sup>11</sup> was introduced in 2008 to provide the principal legal framework for the prevention and control of infectious disease of public health importance<sup>12</sup>.
17. In a legislation-based regime, the recognition of the relevant public health risk at the early stage is of great importance. With the legislative amendment, COVID-19 becomes a statutorily notifiable infectious disease<sup>13</sup> under the subsidiary legislation of the Ordinance. The Department of Health is thereby vested with statutory powers to, amongst others, put “*any person who has been, or is likely to have been, exposed to the risk of contracting [the disease]*” under quarantine and isolation<sup>14</sup>. Without such statutory power, the Department of Health would not have been able to effectively handle confirmed or suspected cases timeously.

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<sup>9</sup> The quarantine law passed by Ragusa stipulated that “*those who come from plague-infested areas shall not enter [Ragusa] or its district unless they spend a month on the islet of Mrkan or in the town of Cavtat, for the purpose of disinfection*” (Source: Dave Roos, “Social Distancing and Quarantine Were Used in Medieval Times to Fight the Black Death” (27 March 2020), available at <https://www.history.com/news/quarantine-black-death-medieval>).

<sup>10</sup> The International Health Regulations (2005) is a set of legally binding regulations for WHO State Parties in respect of providing for a global response to public health threats. They have been extended to the Hong Kong Special Administrative Region pursuant to Article 153 of the Basic Law.

<sup>11</sup> The Prevention and Control of Disease Ordinance (Cap. 599A of the Laws of Hong Kong) is available at [https://www.elegislation.gov.hk/hk/cap599A!en-zh-Hant-HK@2020-01-16T00:00:00?INDEX\\_CS=N&xpId=ID\\_1438403500682\\_001](https://www.elegislation.gov.hk/hk/cap599A!en-zh-Hant-HK@2020-01-16T00:00:00?INDEX_CS=N&xpId=ID_1438403500682_001).

<sup>12</sup> See the Legislative Council Brief on the Prevention and Control of Disease (Amendment) Regulation 2020 and the Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2020 (7 January 2020), available at [https://www.legco.gov.hk/yr19-20/english/subleg/brief/2020ln003\\_004\\_brf.pdf](https://www.legco.gov.hk/yr19-20/english/subleg/brief/2020ln003_004_brf.pdf).

<sup>13</sup> See s.4 of the Prevention and Control of Disease Regulation (Cap. 599A of the Laws of Hong Kong).

<sup>14</sup> See Part 5 of the Prevention and Control of Disease Regulation (Cap. 599A of the Laws of Hong Kong).

18. In the principal Ordinance, apart from empowering the Secretary for Food and Health to make regulations “*for the purpose of preventing the introduction into, the spread in and the transmission from, Hong Kong of any disease, source of disease or contamination; and for the prevention of any disease*”<sup>15</sup>, it also empowers the Chief Executive in Council to make regulations when the situation turns into one of “public health emergency”<sup>16</sup>.
19. Under this regime, “public health emergency” is defined and it includes relevantly, “*the occurrence of or the imminent threat of a disease, an epidemic or a pandemic*” that has “*a high probability of causing a large number of deaths in the population or a large number of serious disabilities (whether or not long-term) in the population*”<sup>17</sup>. The Chief Executive in Council is empowered to impose a broad range of measures for the purposes of “*preventing, combating or alleviating the effects of [such] emergency and protecting public health*” through making regulations under the Ordinance, so long as such situation persists<sup>18</sup>.

*The Prevention and Control of Disease Ordinance and the Emergency Regulations Ordinance*

20. In some jurisdictions a specialized legislation that deals with public health issues may not be available. On the other hand, emergency laws are not uncommon and almost a norm.
21. In Hong Kong, a general regime is to be found in the Emergency Regulations Ordinance<sup>19</sup> which empowers the Chief Executive in Council to make regulations

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<sup>15</sup> See s.7 of the Prevention and Control of Disease Regulation (Cap. 599 of the Laws of Hong Kong).

<sup>16</sup> See s.8 of the Prevention and Control of Disease Ordinance (Cap. 599 of the Laws of Hong Kong).

<sup>17</sup> See s.8(5) of the Prevention and Control of Disease Ordinance (Cap. 599 of the Laws of Hong Kong).

<sup>18</sup> See s.8 of the Prevention and Control of Disease Ordinance (Cap. 599 of the Laws of Hong Kong). In particular, s.8(2) of the Prevention and Control of Disease Ordinance (Cap. 599 of the Laws of Hong Kong) provides that the Chief Executive in Council shall review from time to time, or cause to be reviewed from time to time, the public health emergency in respect of which the regulation is made.

<sup>19</sup> The Emergency Regulations Ordinance (Cap. 241 of the Laws of Hong Kong) is available at <https://www.elegislation.gov.hk/hk/cap241>.

on occasions of “emergency” or “public danger”<sup>20</sup>. While not being statutorily defined in the Ordinance, “emergency” and “public danger”, as understood in their ordinary meaning and their context, must cover a wide range of situations and occurrences and cannot be exhaustively defined. “Emergency” is necessarily concerned with a serious event that calls for immediate and drastic action and “public danger” entails circumstances constituting serious threats to the safety of the public, and hence cover public health risks.<sup>21</sup>.

22. The Emergency Regulations Ordinance has been in the local statute book since 1922, and had been invoked for addressing emergency situations prior to 1997, including relevantly, the prevention and mitigation of cholera and rabies.
23. Given that the Prevention and Control of Disease Ordinance legislated in 2005 is a directly relevant public health legislation that provides a specific statutory regime for public health emergencies, in light of the principle of *lex specialis* and as a matter of good governance, it has been invoked instead of the Emergency Regulations Ordinance in our fight against COVID-19.

*Measures Adopted under the Public Health Emergency Regime of the Prevention and Control of Disease Ordinance*

24. As previously mentioned, a number of public health emergency measures have been imposed for a specified period. The legal basis for these measures have been clearly set out in five new regulations<sup>22</sup> made under the public health emergency

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<sup>20</sup> It should also be noted that emergency powers and measures exist in other legislation of Hong Kong for different sectors and protection of public order (e.g. Sections 31, 36 and 17E of the Public Order Ordinance (Cap. 245 of the Laws of Hong Kong)).

<sup>21</sup> In the judgment of the Court of Appeal ([2020] HKCA 192) in the judicial review case concerning the Emergency Regulations Ordinance, the Court having reviewed the past invocations of the ordinance, stated at [89] that they “reflected a broad concept of emergency and public danger with the commonality of serious and immediate threats to Hong Kong and its citizens as a whole subsisting for a period of time.”

<sup>22</sup> The five new regulations are: the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C of the Laws of Hong Kong), the Prevention and Control of Disease (Disclosure of Information) Regulation (Cap. 599D of the Laws of Hong Kong), the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E of the Laws of Hong Kong), the Prevention and Control of Disease (Requirement and Directions) (Business and Premises) Regulation

regime of the Ordinance.

### Compulsory Quarantine Measures

25. In light of the global situation of the pandemic and the increasing number of overseas confirmed cases, regulations have been made for implementing compulsory quarantine measures<sup>23</sup>. Quarantine orders issued for travelers at the borders are given legal effect. To facilitate enforcement, electronic/blue tooth wristbands are used to track the locale of the individual who should remain in either quarantine camps or quarantine centres, or under home quarantine.

### Social Distancing Measures

26. To strengthen social distancing measures, a regulation has been made to prohibit any group gathering<sup>24</sup> of more than four persons in any public place. Furthermore, the Secretary for Food and Health has been empowered under another regulation to require catering and certain businesses to implement specific measures through issuing directions. These measures are risk-based<sup>25</sup> and include the temporary closure of premises for certain businesses such as places of amusement and public entertainment, and requiring catering business to implement measures such as taking the temperature of customers upon entry and maintaining a minimum distance of 1.5 metres between tables<sup>26</sup>.

27. It is recognized that there will be an interference of the human rights of the

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(Cap. 599F of the Laws of Hong Kong) and the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G of the Laws of Hong Kong).

<sup>23</sup> See the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C of the Laws of Hong Kong) and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E of the Laws of Hong Kong).

<sup>24</sup> Currently, the Secretary for Food and Health has specified a 14-day period from 29 March to 11 April 2020 for prohibition of group gathering.

<sup>25</sup> See the transcript of remarks by the Secretary for Food and Health (1 April 2020), available at <https://www.info.gov.hk/gia/general/202004/01/P2020040100709.htm>.

<sup>26</sup> See the Prevention and Control of Disease (Requirement and Directions) (Business and Premises) Regulation (Cap. 599F).

individuals and as such the measures have to be proportional in pursuit of the legitimate aim of protecting public health, and in light of the need to contain imported cases and prevent community outbreak.<sup>27</sup>

28. The legislation-backed measures are complemented with a range of proportionate criminal penalties, with investigations conducted by the Department of Health and law enforcement agencies and prosecutions by the Department of Justice, to facilitate effective enforcement.

#### *Use of LawTech as a Social Distancing Measure in the COVID-19 Pandemic*

29. The outbreak of COVID-19 brought various inevitable changes to our way of life including our travel patterns. Nevertheless, as part of social distancing measures, modern technology has provided us with the opportunity in exploring the use of LawTech in the provision of legal services.
30. As an example, Hong Kong has recently, for the first time, held the Willem C. Vis (East) International Commercial Arbitration Moot, with 71 teams from 21 jurisdictions and about 250 arbitrators from 52 jurisdictions participating, through an online dispute resolution (ODR) platform supported by the non-governmental eBRAM Centre amidst the pandemic. This experience exemplifies potential of ODR in resolving disputes in an efficient, effective and fair manner.
31. In fact, our Judiciary has also started with the use of video-conferencing facilities for remote hearings for suitable civil cases of the High Court.

#### **(V) “Revitalize” - Government Support Measures**

32. In light of the severe economic and trade impact of the pandemic, the International Monetary Fund is forecasting a global recession in 2020<sup>28</sup>.
33. Under such economic circumstances, government support measures are necessary

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<sup>27</sup> See *Hysan Development Co. Ltd v Town Planning Board* [2016] 9 HKCFAR 372.

<sup>28</sup> See World Economic Forum, “COVID-19 crash: How China’s economy may offer a glimpse of the future” (31 March 2020), available at <https://www.weforum.org/agenda/2020/03/covid19-economy-china-health-coronavirus-economics-global/>.



for supporting the basic needs of the society and also for “**revitalizing**” the economy through assisting industries and affected members of the public. Depending on the nature of the relevant measures, they may be based on legislation or operate through administrative measures.

34. In this regard, the Hong Kong Government has established a HK\$30 billion Anti-epidemic Fund under the Financial Secretary Incorporation Ordinance<sup>29</sup>. We remain vigilant in considering further support measures to alleviate the economic impact of the pandemic as the situations develop<sup>30</sup>.
35. In devising government support measures, it is necessary to ensure that such measures can be implemented efficiently and the assistance can effectively reach the targeted beneficiaries. It is also advisable to take into account the financial position and the long term fiscal plan of the government and the fiscal viability of the support measures such that the economy can sustain and rebound when the pandemic is over.
36. Decisions will have to be made as to whether the revitalization scheme should, apart from providing government measures, include legislative measures that address the impact of COVID-19 on private contracts or transaction. These considerations would be jurisdiction specific and there is no pancea for all.

#### **(VI) Stand in Solidarity in Combating COVID-19 Pandemic**

37. Government measures alone however cannot solve the COVID-19 pandemic. To win this war, the continuous support and cooperation of every citizen in our society is indispensable.
38. As recently stated by the WHO Director General’s remarks at the G20 Extraordinary Leaders’ Summit on COVID-19, “*No country can solve this crisis alone*”. He further referred to “*a paradigm shift in global solidarity – in sharing*”.

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<sup>29</sup> Further information on the Anti-epidemic Fund is available at <https://www.coronavirus.gov.hk/eng/anti-epidemic-fund.html>. See also the Financial Secretary Incorporation Ordinance (Cap. 1015 of the Laws of Hong Kong).

<sup>30</sup> See the transcript of remarks by the Financial Secretary (29 February 2020), available at <https://www.info.gov.hk/gia/general/202002/29/P2020022900393.htm>.

*experiences, expertise and resources, and in working together to keep supply lines open, and supporting nations who need our support”<sup>31</sup>.*

39. From the global perspective, we should remind ourselves that in today’s inter-dependent world, all humans share a common destiny. In such challenging times, we need to put aside our differences, stop creating animosity, stand united and work together against the pandemic. As said by the WHO Director-General, “*we cannot win without solidarity*”<sup>32</sup>.
40. Thank you and good health to you all.

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<sup>31</sup> See WHO Director General’s remarks at the G20 Extraordinary Leaders’ Summit on COVID-19 (26 March 2020), available at <https://www.who.int/dg/speeches/detail/who-director-general-s-remarks-at-the-g20-extraordinary-leaders-summit-on-covid-19---26-march-2020>.

<sup>32</sup> See WHO Director-General’s remarks for G20 trade ministers (30 March 2020), available at <https://www.who.int/dg/speeches/detail/who-director-generals-remarks-for-g20-trade-ministers>.