



Submissions on the Prevention and Control of Diseases Bill

The Law Society has the following submissions:

1. “Just and Equitable”

The Food and Health Bureau undertook in, in paragraph 6 of its Paper: “*Compensation under the Bill*” to:

“provide in the PHE Regulation that any person who sustains loss or damage in consequence of or arising out of the exercise of any requisition power, or is entitled to the use of or rent from any requisitioned property, is entitled to recover such compensation as is just and equitable in the circumstances”.

We wish to raise that more concrete guidance should be set out in the statutory provisions as to how “*just and equitable*” should be interpreted.

We submit that as drafted the regulation is not satisfactory, as it provides little guidance as to how compensation is to be assessed. It is true that the Court will likely decide what is “*just and equitable*” according to common law and constitutional principles. However, without providing more concrete guiding principles and perhaps a non-exhaustive list of common factors that need to be considered, we are afraid that the claimants will have great difficulties in understanding their rights to compensation or to argue their case in case of disputes. We further note that despite our objection, the Administration still decides to retain the suggested provision under section 12 for dispute resolution through arbitration. As not all arbitrators are legally trained or understand the relevant common law and constitutional principles, this may lead to inconsistencies and /or unfairness in the arbitrators’ determinations, or lead to unnecessary appeals on points of law. We note in

subsequent paragraphs of its Paper, the Administration highlighted some principles and circumstances of “*just and equitable*” and we believe many of these guiding principles and normal factors should be placed in the Ordinance and Regulations.

2. Clause 12(1)

Will the use of “*may*” in Clause 12(1) means the Administration will have a wide discretion to decide whether or not to order the payment of compensation, even in “just and equitable” circumstances?

**The Law Society of Hong Kong
Constitutional Affairs Committee**

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