

Government makes "restriction-testing declaration" and issues compulsory testing notice in respect of specified "restricted area" in Yau Ma Tei

The Government today (February 4) exercised the power under the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J) to make a "restriction-testing declaration" (declaration) effective from 7pm, under which people (hereafter referred to as "persons subject to compulsory testing") within the specified "restricted area" in Yau Ma Tei (i.e. 7A-27A Pitt Street, 2-50 Tung On Street, 833-889 Canton Road and 10-16 Dundas Street; see Annex) are required to stay in their premises and undergo compulsory testing. Persons subject to compulsory testing are required to stay in their premises until all such persons identified in the area have undergone testing and the test results are mostly ascertained. The Government aims at finishing this exercise at about 7am tomorrow (February 5), in order to achieve the goal of zero cases in the district with concerted efforts.

A Government spokesman said, "Under Cap. 599J, the Government can, according to the needs of infection control, make a 'restriction-testing declaration'."

The Government will set up temporary specimen collection stations at the "restricted area" and request persons subject to compulsory testing to undergo testing before 2am tomorrow. Persons subject to compulsory testing will be arranged to undergo nucleic acid testing at specimen collection stations where dedicated staff will collect samples through combined nasal and throat swabs. Persons subject to compulsory testing must stay at their place of residence until all test results are ascertained to avoid cross-infection risk. The Government will arrange door-to-door specimen collection for people with impaired mobility and elderly persons, or make arrangements for them to self-collect and submit the deep throat saliva specimens.

"We understand that this exercise will cause inconvenience to the public. The Government has made arrangements to carry out testing for all persons present in the 'restricted area' as soon as possible at night after most people are released from work. The aim is to strive to complete testing of all identified persons subject to compulsory testing and confirm the results, and finish the exercise at around 7am tomorrow with a view to allowing residents to start going to work at around 7am. The Government will make a public announcement when the declaration expires officially. In the cases in which employees are unable to go to work because of the declaration, the Government hopes their employers can exercise discretion and not deduct the salaries or benefits of the employees."

Persons in the "restricted area" who have undergone testing from February 2 to 4, 2021, and are able to provide the SMS notification through a mobile phone or related certification containing the test results, are not required to take the test again. However, they are required to stay in their premises until all such persons identified in the area have undergone testing and the test results are mostly ascertained. Also, according to the compulsory testing notice issued today, any person who had been present at the above buildings for more than two hours from January 22 to February 4, 2021, even if they were not present in the "restricted area" at the time when the declaration took effect, must undergo compulsory testing by February 6.

In order to maintain public and emergency services within the "restricted area", certain working staff (such as healthcare officers and other officers, testing service providers engaged by the Government, cleaning service providers, and staff members of residential care homes for the elderly) are allowed to enter and leave the "restricted area" on the condition that personal information and contacts are given, as well as certain infection control instructions are followed (including undergoing testing before leaving the "restricted area" without the need to wait for the test results).

The Government has prepared simple food and basic cleaning supplies for the residents restricted by the declaration. The Home Affairs Department has set up a hotline (Tel: 2835 1473) and a dedicated hotline (Tel: 3755 6816) for ethnic minorities. The hotline services started operation at 7pm today for residents restricted by the declaration to make enquiries and seek assistance. The Social Welfare Department will also provide assistance to the affected persons.

The Government understands the residents in the district are worried and anxious because of the increase in confirmed cases in recent days. Under the epidemic, businesses in the area have been hit hard and brought to a standstill. Residents' livelihoods are also affected. The Government hopes this temporary inconvenience will completely cut the local transmission chains and ease residents' worries and fear, so that they will regain confidence in resuming social and business activities in the area, and return to a normal life.

The Government appeals to persons subject to compulsory testing for their full co-operation by registering and undergoing testing, and waiting for the results patiently at home. The Government will strictly follow up on whether the persons concerned have complied with the compulsory testing notices and "restriction-testing declaration". Any person who fails to comply with the compulsory testing notices commits an offence and may be fined a fixed penalty of \$5,000. The person would also be issued with a compulsory testing order requiring him or her to undergo testing within a specified time frame. Failure to comply with the compulsory testing order or the restriction-testing declaration is an offence and the offender would be liable to a fine at level 4 (\$25,000) and imprisonment for six months.

Speech by SJ at Award Ceremony of Second CIETAC Cup for Investment Arbitration (English only)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Award Ceremony of the Second CIETAC Cup for Investment Arbitration (Frankfurt Investment Arbitration Moot Court China National Round) today (February 4):

Mr Wang Chengjie (Vice Chairman and Secretary-General of the China International Economic and Trade Arbitration Commission (CIETAC)), distinguished guests, ladies and gentlemen,

It gives me great pleasure to speak at this award ceremony of the second CIETAC Cup for Investment Arbitration. Not only will this award recognise the ability of the teams here in this China National Round, but, as I understand it, the top six teams will be afforded a unique opportunity to take part in the Frankfurt Investment Arbitration Moot. It is really laudable that CIETAC is proactively encouraging and promoting the development of young talents in investment arbitration. I recall thanking CIETAC some years ago when it was sponsoring and supporting the investment arbitration moot organised by the Tsinghua University International Arbitration and Dispute Settlement Program. To see CIETAC taking a concrete step forward to further this object is most heart-warming.

I also recall sitting at the finals of the Frankfurt Investment Arbitration Moot some years back and witnessing some most talented students arguing their cases before us. Time flies as this is now the 13th edition of the moot and we must all thank Dr Sabine Konrad for championing the idea and taking it forward unselfishly and with such dedication.

COVID-19 has changed the world, bringing about a lot of uncertainties and with it opportunities, compelling us to adapt to the new normal. In the world of dispute resolution, be it commercial or investment arbitration or mediation, technology is the tool that we have all turned to when physical meetings and hearings are out of the question. In Hong Kong, eBRAM, an online dispute resolution (ODR) platform, has taken shape and has been assigned to provide an ODR service for COVID-19 related disputes at hardly any cost to the parties. Institutions around the world are all adapting to the pandemic, and CIETAC is no different. It released the "Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic" on April 28, 2020, which promotes non-contact measures for the submission of applications, documents and evidence, and conducts oral hearings via its platform. It also explicitly notes that these guidelines "shall cease to have effect when the pandemic is over".

In fighting the pandemic, States have had to resort to emergency measures so as to address public health issues. These measures range from mandatory quarantine for visitors or returning nationals, compulsory requisition of premises for medical or quarantine purposes, closure of scheduled premises such as restaurants, nationalisation of private hospitals, export bans on foods or medical products, prohibition on group gatherings, travel restrictions, lockdowns and the list goes on. Some States have taken measures to impose restrictions on exports of medical products including vaccines contrary to the strong urges and recommendations from the World Health Organization to do otherwise. It is always a fine balance to strike amongst factors such as public health needs, economic stability and the social needs of the people. History tells us that crisis always generates disputes and inevitably contentious proceedings, often involving States or State-owned enterprises. Sadly, I suspect that it will not be different this time.

The impact of the pandemic on the world supply chain will inescapably affect the performance of commercial contracts. There will be an upsurge on the sale of goods and shipping disputes, where force majeure will be one of, if not the only, core issues. Yet the major disputes may be the investment claims levied against States contending that their measures have breached substantive protections as contained in bilateral investment treaties. The requisition of premises for use as temporary quarantine centres or hospitals and export bans on medical products for domestic use may be framed as expropriation claims. Foreign investors may also contend a violation of the fair and equitable treatment provision or that full protection and security was not provided, causing a loss to investment in the host State.

Bearing in mind that the measures were introduced in good faith for the benefit of the population, it is fair that States would rely on necessity as a defence. If established, this customary international law doctrine of necessity, imprecise though it may be, will allow a state to justify a breach of an international obligation in situations of grave and imminent peril for the essential interests of the state. This principle of necessity has been recognised by the International Court of Justice in cases such as the *Gabcikovo-Nagymaros Project* case and the *Israel Security Wall Case*, as well as codified in Article 25 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ILC Articles).

While the defence of necessity has been invoked far more often than any other defences enumerated in the ILC Articles, it should be pointed out that since the conditions to be met in order to successfully raise this defence are most stringent, and arbitral tribunals may be inconsistent in their application of such conditions, successful invocation of the defence of necessity has been rare.

As I have previously noted, the doctrine of necessity is, at best, imprecise as there are at least two distinct lines of cases that have come to contradictory conclusions on exactly the same set of basic facts as evidenced in the International Centre for Settlement of Investment Disputes (ICSID) cases involving Argentina. One of the elements of the defence is that the

threat has to be sufficiently serious to constitute a grave and imminent peril, which meant that the threat must be actual and not merely a possibility. In the Argentine cases, the tribunal in the CMS decision found that the Argentina financial crisis situation was not serious enough to qualify as a "grave and imminent peril", noting that "the Argentine crisis was severe but did not result in total economic and social collapse". In contrast, the LG&E tribunal, when considering the same Argentine financial crisis, found that the "essential interests of the Argentine state were threatened in December 2001. It faced an extremely serious threat to its existence, its political and economic survival ...".

Similarly, in considering whether the invocation of necessity by Argentina may be barred for the reason that it has contributed to the situation of necessity as provided under Article 25(2)(b) of the ILC Articles, the tribunals in both CMS and LG&E differed when considering a similar set of facts. The CMS tribunal found that the "government policies and their shortcomings significantly contributed to the crisis and the emergency and while exogenous factors did fuel additional difficulties they do not exempt the (Argentine Government) from its responsibility in the matter". The LG&E tribunal, on the other hand, concluded that there was "no serious evidence in the record that Argentina contributed to the crisis resulting in the state of necessity".

Having said that, the position on COVID-19 may be different from the economic crisis of Argentina in 2001 or Belgium in 2008. It is a pandemic and has affected the whole world with no States spared. It has gone unchecked for over a year and indeed the virus has mutated, with new waves of confirmed cases repeatedly hitting a community thereby continuously creating new challenges for States. I only hope that whilst the interests of investors must be protected in accordance with law, the good sense and sympathetic understanding of investors will contain the magnitude and scope of the disputes, so that the world does not go straight into another fight once out of the pandemic, bringing about further polarisation and contentious sentiments.

Recent bilateral and multilateral treaties, such as the India-Brazil Investment Cooperation and Facilitation Treaty concluded in January last year, and the multilateral Regional Comprehensive Economic Partnership (RCEP) between the members of ASEAN and China, Australia, Japan, New Zealand and South Korea signed in November last year, do not contain a mechanism for investor-state dispute settlement (ISDS), suggesting a trend for States to reject traditional international arbitration in favour of new models of dispute resolution to complement investment arbitration or, for some radical views, to replace it completely.

Discussions on ISDS reform are not new. The work of the United Nations Commission on International Trade Law (UNCITRAL), in particular its Working Group III, has been proceeding to identify areas of reform for ISDS, in particular whether other alternative dispute resolution mechanisms such as mediation could pave the way for a more efficient and effective ISDS mechanism.

The Department of Justice co-organised with UNCITRAL and the Asian Academy of International Law a hybrid pre-intersessional meeting of UNCITRAL Working Group III, the first of its kind, last year. We hope that at the meeting this year, we can discuss further on the use of investment mediation in ISDS reform.

Before I conclude, I wish to make a brief point about something that should be increasingly addressed in the international legal community, and that is the need for inclusiveness or, as it has more often been called, diversity. Diversity, in the context of international dispute resolution, must refer not only just to gender diversity, but also race, culture, and age. While ICSID reported last year that only 14 per cent of appointed arbitrators, conciliators and ad hoc committee members were women, a steep drop from the 24 per cent reported in 2019, individuals of 44 nationalities were represented for the 2020 financial year, the highest number in a single year at ICSID.

The need for diversity can be seen worldwide, with last year marking the 10th anniversary of the European Platform of Diversity Charters, which offers a place for existing European Diversity Charters to exchange and share experience and good practices. European Union (EU) Diversity Charters encourage organisations to develop and implement diversity and inclusion policies, and currently 26 such Charters are in existence.

The United Nations (UN) Sustainable Development Goals also promote diversity, with Goal 5 being to achieve gender equality, and Goal 10 being to reduce inequality within and amongst countries.

The Department of Justice launched the "Vision 2030 for Rule of Law" initiative against the backdrop of Goal 16 of the Sustainable Development Goals, which is to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". The 17 Sustainable Development Goals are interconnected, and we will also keep in mind the other goals, including those relating to diversity, in our aim to promote the rule of law.

May I boldly use this opportunity to suggest that we, in this part of the world, should learn from the EU Diversity Charters and the UN Sustainable Development Goals and consider how we can join hands to actively promote diversity by drawing up a Charter of our own, the Asian Inclusive Charter.

To conclude, I would like to congratulate all participating teams that have participated in the moot competition. I hope that you have enjoyed the experience of mooting, the thrill of being questioned and importantly the camaraderie of the mooting community. Needless to say special congratulations to the top teams that will proceed to the Frankfurt finals. Although the Frankfurt moots will be held online this year, I am sure that you will nonetheless benefit from the exchange and interflow of ideas, learning from competitors around the world, and obtaining excellent feedback from distinguished judges. Last but not least, congratulations to CIETAC for the successful organisation of this wonderful competition. Thank you very much.

Expert Committee on Clinical Events Assessment Following COVID-19 Immunisation holds first meeting

The Expert Committee on Clinical Events Assessment Following COVID-19 Immunisation held its first meeting today (February 4). The meeting was hosted by the Expert Committee's Co-convenors Professor Ivan Hung and Dr Lee Cheuk-kwong.

At the meeting, members discussed and endorsed the operating procedures of the Expert Committee. Members also deliberated on the risk communication plan, which covers mainly the monitoring, reporting and following up of the clinical events including adverse events following immunisation (AEFIs) and adverse events of special interest (AESIs) during the COVID-19 vaccination programme. The plan will be finalised and endorsed before the commencement of the vaccination programme.

Before the meeting started, the Director of Health, Dr Constance Chan, thanked the expert advisers for accepting the appointment and participating in the safety monitoring of the emergency use of COVID-19 vaccines in Hong Kong. She said the Government will strive for timely identification of and response to serious clinical events following COVID-19 vaccination that may cause public concern, with a view to continuously monitoring the safety of the authorised COVID-19 vaccines for safeguarding public health.

Pursuant to the Prevention and Control of Disease (Use of Vaccines) Regulation, Cap. 599K, the Secretary for Food and Health is required to put in place a mechanism for monitoring any adverse event occurred to the recipients associated with the administration of the COVID-19 vaccines authorised under the Regulation.

Meanwhile, the adverse drug reaction (ADR) reporting system established by the Department of Health (DH) receives local ADR reports including AEFI reports from healthcare professionals and will conduct causality assessment between the vaccine concerned and the clinical event. In addition, the DH has engaged the University of Hong Kong to conduct active surveillance of AEFIs and AESIs following COVID-19 immunisation.

In this connection, the Director of Health appointed the Expert Committee to provide independent assessment of potential causal links between the clinical events and the COVID-19 vaccines used in Hong Kong, reviewing all serious clinical events for expert opinion and advising on immunisation safety-related matters of COVID-19 vaccines.

“LeaveHomeSafe” mobile app pilot scheme runs smoothly at government buildings on first day

To better assist the Centre for Health Protection (CHP) of the Department of Health (DH) in epidemiological investigations and to further protect the health and safety of government employees and members of the public using public services, the Government launched a pilot scheme starting today (February 4), under which government employees and members of the public are reminded to use the "LeaveHomeSafe" mobile app at the entrances of government buildings or offices. The first phase of the pilot scheme covers the Central Government Offices and Tai Po Government Offices. The first day of operation was generally smooth. The Government would like to thank members of the public and employees for their co-operation on the relevant arrangements.

Using the "LeaveHomeSafe" mobile app achieves three purposes:

- i. it allows members of the public to record the time of visits to different venues;
- ii. in the unfortunate event of infection of COVID-19 by the user, visit records stored in the mobile app can assist the CHP of the DH in epidemiological investigations and trace other close contacts; and
- iii. users will be notified by the mobile app if they are later identified to have visited the same venue that a confirmed patient has visited at about the same time, so as to increase the users' vigilance and sense of self-protection.

Throughout the implementation of the pilot scheme, temporary service stations are set up at relevant government buildings to assist people in need to install the mobile app on the spot. Through the pilot scheme, the Government hopes to further encourage government employees and members of the public to establish a habit of recording their whereabouts during the fight against the epidemic. Phase two of the pilot scheme will commence on February 16, covering the Harbour Building, Mong Kok Government Offices and Tuen Mun Government Offices.

The Government will progressively extend the usage of the "LeaveHomeSafe" mobile app to more government buildings and offices, and has requested relevant government departments to take forward the preparatory work. Details will be announced in due course. The Government appeals to the public to fight the epidemic together and follow instructions on site. Members of the public are also encouraged to download the "LeaveHomeSafe" mobile app as soon as possible and use it frequently, so as to maximise the function of the mobile app.

Public hospitals daily update on COVID-19 cases

The following is issued on behalf of the Hospital Authority:

As at 9am today (February 4), 51 COVID-19 confirmed patients were discharged from hospital in the last 24 hours. So far, a total of 9 684 patients with confirmed or probable infection have been discharged.

At present, there are 672 negative pressure rooms in public hospitals with 1 231 negative pressure beds activated. A total of 630 confirmed patients are currently hospitalised in 23 public hospitals and a community treatment facility, among which 26 patients are in critical condition, 26 are in serious condition and the remaining 578 patients are in stable condition.

The Hospital Authority will maintain close contact with the Centre for Health Protection to monitor the latest developments and to inform the public and healthcare workers on the latest information in a timely manner.

Details of the above-mentioned patients are as follows:

Patient condition	Case numbers
Discharged	8270, 9284, 9304, 9503, 9554, 9607, 9621, 9630, 9646, 9655, 9670, 9698, 9713, 9724, 9740, 9749, 9767, 9782, 9799, 9838, 9842, 9846, 9853, 9877, 9883, 9915, 10024, 10064, 10073, 10094, 10123, 10137, 10160, 10172, 10176, 10178, 10198, 10236, 10259, 10264, 10265, 10267, 10286, 10312, 10320, 10363, 10364, 10383, 10399, 10453, 10459
Critical	1989, 3496, 6125, 6444, 6547, 6607, 6754, 6794, 7021, 7172, 8018, 8078, 8323, 8900, 9049, 9135, 9267, 9438, 9612, 9907, 9959, 10196, 10238, 10358, 10367, 10417
Serious	6386, 7076, 7305, 7468, 7653, 8126, 8221, 9040, 9045, 9055, 9166, 9550, 9662, 9733, 9734, 9793, 9858, 9867, 9880, 9905, 9998, 10002, 10023, 10083, 10134, 10503