CHAPTER 12

LEGAL POWERS AND COMPENSATION

Legal Powers

12.1  To carry out a wide range of functions and duties as required under the DBCP, departments may make use of their existing legal powers in various regimes covering security, rescue, food safety, public health, consumer protection, radiation health and safety, etc. Only in some extreme circumstances would additional emergency powers be required.

12.2  Further emergency powers may need to be provided for where warranted, for example, to require food importers or distributors to provide radiological screening information, or to designate an area to prohibit entry and undertake decontamination. In this light, we have prepared a draft Emergency (Radiological Contamination) Regulation (at Annex 12), which may be enacted by the Chief Executive in Council under s.2(1) of the Emergency Regulations Ordinance (Cap. 241) when, and only when, there is an occasion of emergency or public danger in the domestic context of Hong Kong.

12.3  The possibility of invoking this procedure is very remote, and may be considered by CESG at FULL ACTIVATION level, taking account of the advice of relevant parties on various aspects, including public health by DH, public order by HKPF, accident consequences by HKO and legal aspects by DoJ. The Regulation can immediately come into effect upon being made by the CE in Council.

Compensation

12.4  Claims for compensation by anyone within or outside the Mainland suffering nuclear damage caused by a nuclear incident at the GNPS/LNPS can be lodged in the Mainland against the operator of the nuclear plant. The operating permits of the GNPS and LNPS are jointly held by the respective plant owners and their operator, Daya Bay Nuclear Power Operations and Management Co. Ltd (DNMC). DNMC is located at Science and Technology Building, Shangbu Zhong Road Shenzhen. Guangdong Nuclear Power Joint Venture Co. Ltd. is the owner of the GNPS and Ling Ao Nuclear Power Co. Ltd. is the owner of LNPS Phase 1, both offices of which are located at Nuclear Power Building, Shennan Zhong Road, Shenzhen. Ling Dong Nuclear Power Co. Ltd. is the owner of LNPS Phase 2 and is located at Science and Technology Building, Shangbu Zhong Road, Shenzhen.

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1 The text at Annex 12 remains a draft at the present stage subject to necessary refinements and proper legislative procedures for enactment.
12.5 The relevant laws and regulations include Article 70 of “The Law on Tort Liability” (《中華人民共和國侵權責任法》)², “Reply to Questions on the Liabilities of Compensation for Damages resulting from Nuclear Incidents” (《國務院關於核事故損害賠償責任問題的批覆》)³ and “Reply to the Ministry of Nuclear Industry, the National Nuclear Safety Administration and the State Council Atomic Energy Board in respect of Handling Nuclear Third Party Liability”. (《國務院關於處理第三方核責任問題給核工業部、國家核安全局、國務院核電領導小組的批覆》)⁴.

12.6 The operator of the nuclear plant should bear liability in a single nuclear incident up to RMB 300 million. The operator is obliged to maintain insurance and appropriate financial security to meet the liability for compensation. If compensation to be paid by the operator is over the limit, the Government of PRC will provide financial allowance to a maximum amount of RMB 800 million. Further allowance may be granted at the discretion of the State Council after assessment.

12.7 Victims are entitled to claim compensation from the operator of the nuclear plant within three years from the date on which they have knowledge or should have knowledge of the nuclear damage. Such claims must be brought within ten years from the date of the nuclear incident.

12.8 A claim for compensation can be lodged at the people’s court of the place where the nuclear incident occurred or where the operator is situated⁵. Since the GNPS/LNPS and the operator is situated in Shenzhen, it would be proper to apply for compensation in the People’s Court in Shenzhen.

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² “The Law on Tort Liability” (《中華人民共和國侵權責任法》) was adopted by Standing Committee of National People’s Congress on 26 December 2009 and effective from 1 July 2010. Article 70 provides that where a nuclear accident occurs to a civil nuclear facility and causes any harm to another person, the operator of civil nuclear facility shall assume the tort liability unless it can prove that the harm is caused by a situation such as war or by the victim intentionally.

³ “Reply to Questions on the Liabilities of Compensation for Damages resulting from Nuclear Incidents” (《國務院關於核事故損害賠償責任問題的批覆》) was promulgated by the State Council on 30 June 2007.

⁴ “Reply to the Ministry of Nuclear Industry, the National Nuclear Safety Administration and the State Council Atomic Energy Board in respect of Handling Nuclear Third Party Liability” (《國務院關於處理第三方核責任問題給核工業部、國家核安全局、國務院核電領導小組的批覆》) was promulgated by the State Council on 29 March 1986.

⁵ According to Article 29 of the “Civil Procedure Law of PRC” (《中華人民共和國民事訴訟法》), a lawsuit brought on a tortious act shall be under the jurisdiction of the people’s court of the place where the tort is committed or where the defendant has his domicile.
Emergency (Radiological Contamination) Regulation

(Made by the Chief Executive in Council under section 2 of the Emergency Regulations Ordinance (Cap. 241))

1. Interpretation

In this Regulation—

authorized officer (獲授權人員) means a person authorized under section 2(1) and includes persons holding or acting in the offices set out in the Schedule;

competent authority (主管當局) means a person appointed under section 2(2);

foodstuff (食品) includes any edible substance produced for human consumption and shellfish, but does not include livestock;

live fish (活魚) means fish that are alive in water, but does not include shellfish;

livestock (禽畜) includes any of the following that is bred for human consumption—

(a) live animals;
(b) live fish;
(c) live birds;

prescribed contamination level (受輻射污染) means, in relation to any purpose, the limit of radiological contamination determined under section 2 for that purpose;

radiologically contaminated foodstuff (受輻射污染的食品) means foodstuff with a level of radiological contamination exceeding the prescribed contamination level;

radiologically contaminated livestock (受輻射污染的禽畜) means livestock with a level of radiological contamination exceeding the prescribed contamination level;

radiologically contaminated material (受輻射污染的物料) means any inanimate object with a level of radiological contamination exceeding the prescribed contamination level.

2. Authorized officer

(1) The Secretary for Security may authorise a person by name or office to be an authorized officer for the purpose of this Regulation.
(2) The Secretary for Security may appoint a person by name or office to be the competent authority for the purpose of this Regulation.

3. **Radiological contamination limits to be determined by competent authority**

The competent authority must determine the permitted limits of radiological contamination.

4. **Powers of authorized officers**

(1) An authorized officer may—

(a) carry out radiation scanning of any person, foodstuff, livestock or material believed to be radiologically contaminated;

(b) test any foodstuff, livestock or material to determine whether it is radiologically contaminated;

(c) mark or otherwise identify any radiologically contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material;

(d) take control of any car park, open space or waters to isolate foodstuff, livestock or material believed to be radiologically contaminated and prohibit any person from entering the car park, open space or waters without the permission of an authorized officer;

(e) take control of any open space, place or building to—

(ii) undertake decontamination processes, and prohibit any person from entering the open space, place or building;

(f) designate an area to isolate foodstuff, livestock or material believed to be radiologically contaminated;

(g) designate an area to carry out radiation scanning or to undertake decontamination processes;

(h) seize, detain, remove, investigate and dispose of foodstuff, livestock or material believed to be radiologically contaminated;

(i) direct a person believed to be radiologically contaminated to undergo a decontamination process;

(j) direct a driver of a vehicle believed to be radiologically contaminated or to contain radiologically contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material to take the vehicle to a point designated by the officer and to have the vehicle and its contents undergone a decontamination process;

(k) direct a person in charge of a vessel, aircraft or train believed to be radiologically contaminated or to contain radiologically
contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material to take the vessel, aircraft or train to a point designated by the officer and to have the vessel, aircraft or train and its contents undergone a decontamination process;

(l) enter farms or other non-residential places where foodstuff or livestock is normally kept to check the radiation levels of the foodstuff and livestock;

(m) detain a vehicle, vessel, aircraft or train and refuse to permit it to enter Hong Kong if the officer believes the vehicle, vessel, aircraft or train contains foodstuff, livestock or material believed to be radiologically contaminated.

(2) A person who fails to comply with a direction given under subsection (2) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 2 years.

(3) A person who is required to submit foodstuff, livestock or material believed to be radiologically contaminated to undergo a decontamination process is not entitled to claim compensation for any damage or injury arising out of that process.

5. Investigation powers

(1) An authorized officer may require a person to give details of any substances or articles on board a vessel, aircraft, hovercraft or marine structure.

(2) An authorized officer—

(a) may require a vessel, aircraft, hovercraft or marine structure to stop;

(b) may require the attendance—

(i) of the master, captain or commander of a vessel, aircraft or hovercraft;

(ii) of the person in charge of a marine structure; and

(iii) of any other person who is on board a vessel, aircraft, hovercraft or marine structure;

(c) may require a person on board a vessel, aircraft, hovercraft or marine structure to assist the officer in the discharge of the officer’s functions;

(d) may require—

(i) the master, captain or commander of a vessel, aircraft or hovercraft; and

(ii) the person in charge of a marine structure,

to take it and its crew to the port which appears to the officer to be the nearest convenient port, or may take it there himself or herself.
6. Controls on imports

(1) An importer of foodstuff or livestock must give an authorized officer the particulars specified in subsection (2) for each consignment—
   (a) on arrival at a land border control point; or
   (b) at a wholesale food market.

(2) The particulars to be given under subsection (1) are—
   (a) the source of supply;
   (b) the quantity;
   (c) the type of produce;
   (d) the date and time of arrival in Hong Kong;
   (e) the name of the consignor, consignee, supplier and producer; and
   (f) whether or not the consignment has undergone radiation screening at a point of entry to Hong Kong or at a farm.

(3) An importer who contravenes subsection (1) commits an offence and is liable to a fine at level 2 and to imprisonment for 2 years.

(4) An importer who provides false or misleading information under subsection (1) commits an offence is liable to a fine at level 2 and to imprisonment for 2 years.

(5) A magistrate may order the forfeiture of any foodstuff or livestock seized in relation to an offence under subsection (1) whether or not a person is convicted of the offence.

7. Prohibition of import of radiologically contaminated foodstuff, etc.

(1) A person must not import radiologically contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material into Hong Kong.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 2 and to imprisonment for 2 years.

(3) A magistrate may order the forfeiture of any foodstuff, livestock or material seized in relation to an offence under subsection (1) whether or not a person is convicted of the offence.

8. Prohibition of possession of radiologically contaminated foodstuff, etc.

(1) A person must not possess radiologically contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material.

(2) A person who is aware that radiologically contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material has entered Hong Kong must inform an authorized officer of the fact.
(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 2 and to imprisonment for 2 years.

9. Offences

(1) A person who—

(a) refuses to hand over foodstuff, livestock or material suspected or believed by an authorized officer to be radiologically contaminated;

(b) refuses to allow an authorized officer to examine or measure foodstuff, livestock or material; or

(c) refuses to move radiologically contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material of which the person is in possession, charge or control when instructed to do so by an authorized officer, commits an offence.

(2) A person who knowingly possesses radiologically contaminated foodstuff, radiologically contaminated livestock or radiologically contaminated material commits an offence.

(3) A person who refuses to undergo radiation scanning or a decontamination process as directed by an authorized officer commits an offence.

(4) A person who commits an offence under this section is liable to a fine at level 2 and to imprisonment for 2 years.
Schedule

Authorized Officers for the Purposes of this Regulation

Senior Agricultural Officer
Agricultural Officer
Senior Field Officer
Senior Fisheries Supervisor
Field Officer I
Field Officer II
Fisheries Technical Officer I
Fisheries Technical Officer II
Senior Fisheries Officer
Fisheries Officer
Fisheries Supervisor I
Fisheries Supervisor II
Principal Veterinary Officer
Senior Veterinary Officer
Veterinary Officer
Members of Customs and Excise Service as set out in Schedule 1 to the Customs and Excise Services Ordinance (Cap. 342)
Members of the Auxiliary Medical Service as set out in Schedule 1 to the Auxiliary Medical Service Ordinance (Cap. 517)
Members of the Civil Aid Service as set out in Schedule 1 to the Civil Aid Service Ordinance (Cap. 518)
Members of Fire Services as set out in the Sixth Schedule to the Fire Services Ordinance (Cap. 95)
Health Inspectors as set out in section 2 of Public Health and Municipal Services Ordinance (Cap. 132) employed by Food and Environmental Hygiene Department
Members of Immigration Service as set out in the Schedule 1 to the Immigration Service Ordinance (Cap. 331)
Police Officer under section 3 of Police Force Ordinance (Cap. 232)
Officer of Post Office under section 2 Post Office Ordinance (Cap. 98)

Clerk to the Executive Council

COUNCIL CHAMBER

[date]
Explanatory Note

The purpose of this Regulation is to confer emergency powers in respect of the emergency situation caused by radiological contamination in Hong Kong.

2. Section 1 contains definitions that are necessary for the interpretation of the Regulation.

3. Section 2 empowers the Secretary for Security to make authorization and appointment for the purpose of the Regulation.

4. Section 3 empowers the competent authority to determine the permitted limits of radiological contamination for the purpose of exercise of powers under the Regulation.

5. Section 4 sets out powers that may be exercised by an authorized officer. The powers include the conduct of radiation scanning, testing of radiological contamination, taking control of premises, seizure of radiologically contaminated matters and other powers relevant for the control of radiological contamination. A person who fails to comply with any direction issued in connection with the exercise of powers commits an offence.

6. Section 5 confers investigation powers on authorized persons, who may require operators of a conveyance to provide details about articles on board the conveyance and to provide further assistance.

7. Section 6 imposes controls on imports of foodstuff or livestock, and requires the importers to provide prescribed information in relation to the foodstuff or livestock. An importer who fails to provide the information, or provides false or misleading information, commits an offence.

8. Section 7 prohibits the import of radiologically contaminated foodstuff, livestock or other materials. A person who contravenes the prohibition commits an offence.

9. Section 8 prohibits the possession of radiologically contaminated foodstuff, livestock or other materials, and requires a person who is aware of any import of radiologically contaminated foodstuff, livestock or other materials to inform an authorized officer of that fact. A person who contravenes the provisions commits an offence.

10. Section 9 sets out further offences in relation to requirements imposed for control of radiological contamination.