

FEHD cancels licence of light refreshment restaurant in Jordan

The Director of Food and Environmental Hygiene today (December 11) cancelled the licence of a light refreshment restaurant in Jordan, as the operator repeatedly breached the Food Business Regulation (FBR) by illegally extending its business area and storing utensils in an open space.

The restaurant is located at Flat D on the ground floor at 89 Shanghai Street, Jordan.

"In April and June this year, two convictions for extending the business area illegally were recorded against the restaurant. A total fine of \$13,100 was levied by the court and 30 demerit points were registered against the licensee under the department's demerit points system. The contraventions resulted in the cancellation of the licence," a spokesman for the Food and Environmental Hygiene Department (FEHD) said.

The licensee of the food premises had a record of four convictions for extending the business area illegally and storing utensils in an open space between October 2017 and September last year. A total fine of \$24,000 was levied and 45 demerit points were registered. The breaches led to licence suspensions for seven days in August last year and 14 days between December last year and January this year respectively.

The spokesman reminded licensees of food premises to comply with the FBR or their licences could be suspended or cancelled.

Licensed food premises are required to exhibit a sign, at a conspicuous place near the main entrance, indicating that the premises have been licensed. A list of licensed food premises is available on the FEHD's website (www.fehd.gov.hk/english/licensing/licence-foodPremises-rest.html).

Fifth Protocol to Avoidance of Double Taxation Arrangement between the Mainland and Hong Kong in force

The Fifth Protocol to the Comprehensive Avoidance of Double Taxation Arrangement between the Mainland and Hong Kong has entered into force, a Government spokesman said today (December 11).

The Fifth Protocol to the Arrangement was signed in July this year. It

incorporates into the Arrangement a new teachers and researchers article to provide tax relief to eligible Hong Kong and Mainland teachers and researchers working on the other side, as well as measures to prevent tax treaty abuse to ensure that the Arrangement follows the latest international tax standard. It came into force on December 6, 2019, after completion of approval procedures on both sides. It will apply in Hong Kong to income derived in the years of assessment beginning on or after April 1, 2020.

LCQ1: Prosecution work of the Department of Justice

Following is a question by the Hon Luk Chung-hung and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (December 11):

Question:

The cumulative number of persons arrested, since June this year in relation to the disturbances arising from the proposed legislative amendments, is as high as several thousands, with some of them being, one after another, charged with the relevant offences. On the 4th of last month, when a case involving five defendants was brought before the Eastern Magistrates' Courts, a misnomer for one of the defendants and inconsistency in the Chinese and English versions of the charges were uncovered in the consent to prosecution of the Department of Justice (DoJ). As a result, the prosecution had to withdraw the charges against all the defendants. Later on, the DoJ instituted prosecutions against them afresh. Regarding the prosecution work of the DoJ, will the Government inform this Council:

(1) of the number of cases in each of the past five years in which the trial processes were affected by errors made by the prosecutors, and the details of such errors; the number of cases in which the trials were discontinued, the number of defendants who were released by the court unconditionally, and the number of convicted persons who were imposed a more lenient punishment, as a result of such errors;

(2) whether the DoJ has reviewed the causes of the prosecutors' making such errors so as to avoid the recurrence of such errors; if so, of the details; if not, the reasons for that; whether the officers concerned were subject to any disciplinary actions; if so, of the details; if not, the reasons for that; and

(3) whether, in order to cope with the increasingly heavy prosecution workload brought about by handling the cases relating to the disturbances arising from the proposed legislative amendments, the DoJ has examined the

employment of additional manpower and measures for expediting prosecution work; if so, of the details; if not, the reasons for that?

Reply:

President,

The rule of law is the core value of Hong Kong. A criminal justice process includes investigation, prosecution, defence, adjudication and punishment, of which prosecutors carry out their roles as an integral part of it. When conducting prosecutions, a prosecutor is required to comply with and promote the rule of law, fairly and objectively assisting the court to arrive at the truth and to do justice in accordance with the law. Professional, impartial and independent prosecution work is pivotal in safeguarding the rule of law in Hong Kong.

Article 63 of the Basic Law provides that “the Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference”. Prosecutors of the Department of Justice (DoJ) always shoulder the constitutional duty enshrined therein.

The Prosecution Code (the Code) compiled by the DoJ provides reference points and guidance for prosecutors in prosecution work. It states that the responsibility of prosecutors is to apply the highest of professional standards in handling criminal cases. According to paragraph 1.2 of the Code, a prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. In making decisions of whether or not to prosecute, the DoJ must make an objective and professional assessment of the available evidence and applicable law, and act in accordance with the Code. Cases will not be handled differently owing to the political beliefs or background of the persons involved.

The Secretary for Justice, the Director of Public Prosecutions and the prosecution team have all along been discharging their prosecutorial duties fairly and without prejudice or favour in accordance with the above principles so as to safeguard criminal justice.

In relation to the Hon Luk Chung-hung’s specific questions, the DoJ’s detailed reply is as follows:

(1) The DoJ does not maintain the requested figures. Generally, when conducting prosecutions, including handling prosecution documents, prosecutors of the DoJ are required to handle all criminal cases professionally and in strict accordance with the law and the relevant guidelines in the Code.

Regarding the handling of the case mentioned at the Eastern Magistrates’ Courts on November 4 this year, the DoJ had made submissions to the Court, which were accepted by the Court. As the five defendants concerned have been immediately arrested and charged, and the relevant legal proceedings remain ongoing, it is not appropriate for the DoJ to comment further.

(2) The civil service performance management system for civil servants formulated by the Civil Service Bureau serves as an official mechanism to monitor and assess staff performance. Civil servants' performance is reflected in an honest, objective and comprehensive manner in their appraisal reports.

Where any act, conduct or behaviour of an officer is in breach of the Civil Service Code or government regulations, the department concerned will take appropriate follow-up actions in accordance with established procedures. If there is evidence upon investigation that a civil servant has misconducted himself, or a civil servant has been convicted of criminal offence by the Court, appropriate disciplinary action will be taken, including imposing disciplinary punishment of verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal, etc. The above mechanism is applicable to civil servants of different grades and ranks including prosecutors of the DoJ.

The Code also sets out the role and duties of prosecutors. DoJ's prosecutors have always discharged their prosecutorial responsibilities in accordance with the relevant principles and have at all times exercised the highest standards of integrity and care in maintaining proper administration of justice.

The DoJ attaches great importance to the professional qualities of prosecutors and provides them with continuing education and training. Moreover, the Prosecutions Division (PD) of the DoJ has established procedures to regularly remind all prosecutors of points to note. It also reviews and updates from time to time the approaches and procedures in handling criminal cases for enhancement of prosecution work.

(3) All criminal investigations are conducted by law enforcement agencies, which will, when necessary, refer cases to the DoJ for independent decisions on whether to prosecute. The DoJ at all times seeks to provide legal advice to law enforcement agencies, including the Police, as expeditiously as possible. The processing time from commencement of investigation to institution of prosecution for each case depends on various factors, such as the time required for investigation by law enforcement agencies, the volume of evidence, and the nature and complexity of the case.

There are currently over 200 prosecutors in the PD of the DoJ. There has been a dedicated team of prosecutors within the PD for handling cases concerning public order events to ensure consistency in the handling approach. In view of the recent increase in the number of public order event cases, the DoJ has also arranged for officers who had formerly served in that dedicated team to assist in work relating to prosecutorial decisions. Subject to the overall operational needs of the PD, we do not rule out the possibility of introducing measures as necessary in the future such as deployment of additional manpower to handle relevant cases.

The DoJ will continue to maintain communications with the Police and to

conduct its prosecution work in a fair, effective and efficient manner.

Thank you, President.

LCQ13: Regulation of products containing microbeads

Following is a question by the Hon Kenneth Leung and a written reply by the Secretary for the Environment, Mr Wong Kam-sing, in the Legislative Council today (December 11):

Question:

In the Supplement to the Policy Address of this year, the Government indicated that it would implement a voluntary scheme for phasing out personal care and cosmetic products containing microbeads (Voluntary Scheme) to encourage the trade to stop the manufacture, import and sale of such type of products and help consumers choose microbead-free products. In this connection, will the Government inform this Council:

(1) as it is learnt that enacting legislation to ban products containing microbeads has become a global trend (countries which have enacted such legislation include the United States, the United Kingdom and South Korea), of the justifications for the Government to merely implement the Voluntary Scheme instead of enacting legislation; whether the Government will undertake to introduce legislation within the coming three years to comprehensively regulate the manufacture, import and sale of products containing microbeads; if so, of the details and timetable; if not, the justifications for that;

(2) of the details (including the implementation details, monitoring approach, and anticipated participation rate and effect) of the Voluntary Scheme;

(3) whether it will take measures or provide incentives to encourage small and medium retailers to participate in the Voluntary Scheme; if so, of the details; if not, the reasons for that; and

(4) given that the Environmental Protection Department commenced a one-year consultancy study in mid-2018 on personal care and cosmetic products containing microbeads, when the relevant study report will be published?

Reply:

President,

Reply to the question raised by the Hon Kenneth Leung is as follows:

(1) The Environmental Protection Department commissioned a consultancy study in April 2018 to review the international trend of regulating personal care and cosmetic products (PCCPs) containing microbeads and to collect and analyse relevant local market information, as well as to suggest a regulatory approach applicable to Hong Kong. The study cited a report compiled by the International Union for Conservation of Nature stating that the majority of microplastics present in the ocean comes from natural degradation of plastic waste, while only 15 per cent to 31 per cent may originate from other specific sources, namely, plastic pellets raw materials, tyres, synthetic textiles, marine coatings, road markings, city dust and personal care products. Among these specific sources, the release of microbeads to the ocean from the use of PCCPs only accounts for about 2 per cent of the global microplastics emission quantity. Although by proportion this is a very minimal source, it is regarded as the only source of "intentional release". Hence various measures have been progressively implemented around the world to control the release of microbeads at the source.

Currently, voluntary phase-out and legislative control are two main approaches adopted in different places according to their particular circumstances to replace microbeads with alternative materials in the products progressively.

In the situation of Hong Kong, the local PCCP market is largely dependent on import, with manufacturing bases set up at places outside Hong Kong, including those countries and regions that have adopted different means and coverage to ban the manufacture of some types of microbead-containing products. Therefore, it will take quite some time to work out an appropriate and clear regulatory approach, to consult the various stakeholder groups in the trade, to go through the legislative procedures, and to allow time for the industry to clear out their stock. As such, whether to serve as a transitional arrangement in the legislative process or to respond to the society's strong aspiration for Hong Kong to catch up with the international trend of eliminating products containing microbeads as soon as possible, putting in place a voluntary phase-out scheme in the short term would be indispensable.

Based on the above analysis, we adopted the consultant's recommendation to implement a voluntary scheme first for phasing out PCCPs containing microbeads, aiming to encourage the trade to stop the production, importation and sale of these products, and to assist consumers in choosing microbead-free products. We will review the effectiveness of the voluntary phase-out scheme two years after its launch, and assess whether it is suitable to adopt legislative control over products containing microbeads in the Hong Kong market.

(2) The study information indicates that some places around the world, such as Australia and the Netherlands, have successfully applied voluntary schemes to progressively phase out microbeads. For example, the Australian Government launched in 2017 a voluntary programme with the phase-out rate assessed

regularly. Based on data collected up to 2018, 97 per cent of PCCPs in Australia are already microbead-free.

Making reference to successful overseas experience, the Government has initial plan to establish a "Microbead-free Charter" for implementing a voluntary phase-out scheme. Participants, taking due consideration of their operational conditions, can set their own targets and timetables for reducing or ceasing the production, importation and sale of PCCPs containing microbeads and strive to achieve the targets within the set timeframe. In the course of the scheme, we will follow up on the participants' phase-out progress, and conduct sample surveys and product testing for the purpose of examining and reporting the effectiveness of the scheme. At the same time, the Government will launch complementary publicity and education activities to provide the public with appropriate and accurate information, and to enhance their understanding of microbeads-related subjects. We plan to roll out the voluntary phase-out scheme in the second half of 2020. Its details, including the execution plan, monitoring methodology, effectiveness measurement, etc are still being drafted.

(3) We understand that, from the retailers' point of view, in particular small and medium-sized retailers having limited capability in market research and less resource for advertising and promotion, the necessary incentives for them to participate in ceasing the sale of PCCPs containing microbeads would be that they can obtain reliable ingredient information from manufacturers or importers and receive some support on public promotion. In fact, in recent years some international brand-name companies have taken voluntary actions to phase out microbeads gradually and replace them with natural alternatives (e.g. salt crystals, nut shells) in their products to enhance corporate image and competitiveness, and there has been an increasing variety of microbead-free products in the market. Therefore, on one hand, we plan to publicise the list of merchants that have joined the "Microbead-free Charter" and organise promotion activities such as launching and award presentation ceremonies to show encouragement and recognition. On the other hand, we would also provide the public with a list of microbead-free products and information on microbeads alternatives so as to share the retailers' responsibility on product checking and to facilitate green purchasing by consumers.

(4) The key findings and recommendations of the consultancy study have been covered in this reply. The consultancy study report is still being compiled and its relevant contents would be released in due course.

LCQ16: Subsidy schemes on building safety and rehabilitation

Following is a question by the Hon Tony Tse and a written reply by the

Secretary for Development, Mr Michael Wong, in the Legislative Council today (December 11):

Question:

In October this year, the Government announced that an additional funding of a total of \$10.5 billion would be provided for four subsidy schemes (i.e. the Operation Building Bright 2.0, the Building Maintenance Grant Scheme for Elderly Owners, the Lift Modernisation Subsidy Scheme and the Fire Safety Improvement Works Subsidy Scheme) to help more owners in need to properly maintain and repair their buildings. In this connection, will the Government inform this Council:

(1) whether it knows the following details of each of the subsidy schemes since their implementation: (i) the respective numbers of applications received and approved, (ii) the number of buildings benefited, (iii) the average time taken for the vetting and approval of each approved application, and (iv) the total amount of subsidies granted so far (set out in a table);

(2) given that some members of the construction industry are concerned about whether the Urban Renewal Authority and the Hong Kong Housing Society, which are tasked with implementing the subsidy schemes, have sufficient manpower to process and follow up the relevant applications, whether the Government knows if such institutions will, in the coming year, (i) increase manpower and (ii) draw up performance pledges on the time to be taken for vetting and approval of applications;

(3) given that some buildings lack an owners' corporation to take charge of the co-ordination work on applying for the subsidy schemes, and that quite a number of owners have indicated that they are unfamiliar with the details of such schemes, of the new measures put in place to encourage the owners concerned to lodge applications, and to provide them with the assistance they need; and

(4) whether it has assessed if there are sufficient qualified contractors and workers on the market to carry out building safety and rehabilitation works under the subsidy schemes, as well as the new measures put in place to handle the situation of a mismatch between manpower and skills?

Reply:

President,

Timely and proper building maintenance is the primary responsibility of property owners. That said, some owners, in particular those residing in aged "three-nil" buildings (Note 1), may lack the technical knowledge or financial means in fulfilling the responsibility. Therefore, the Government has rolled out various subsidy schemes relating to building safety and rehabilitation to assist needy owners according to schemes' respective objectives. The Government has also announced on October 11, 2019 to inject additional funding into and enhance four existing subsidy schemes.

My reply to the question raised by Hon Tony Tse is as follows:

(1) As at November 2019, the approximate number of applications received and approved, number of beneficiary buildings or lifts involved, and amount of subsidy approved under the relevant schemes are set out in the table below:

| | Number of applications received | Number of applications approved | Number of buildings or lifts involved in approved applications | Subsidy approved |
|--|---------------------------------|---------------------------------|--|------------------------|
| Operation Building Bright 2.0 (OBB 2.0) | 650 | 580 | 480 buildings (Note 2) | Nil (Note 3) |
| Lift Modernisation Subsidy Scheme (LIMSS) | 1 200 | 610 | 1 400 lifts (Note 4) | Nil (Note 3) |
| Fire Safety Improvement Works Subsidy Scheme (FSIWSS) | 2 570 | 1 930 | 1 950 buildings | Nil (Note 3) |
| Building Maintenance Grant Scheme for Elderly Owners (BMGSEO) | 35 000 | 27 100 | Not applicable (Note 5) | \$690 million (Note 6) |

As regards the vetting time, the first round of applications for OBB 2.0, FSIWSS and LIMSS had already closed. The Urban Renewal Authority (URA) had initially vetted the applications and written to applicants informing them of the results and the priorities. The URA will approach the applicants according to their priority and assist them in organising and undertaking the works.

Hong Kong Housing Society (HKHS) is the Government's partner of BMGSEO (note 8). Generally speaking, the grants can be released within two months upon receipt of all documents from and completion of required formalities by the applicants.

(2) The URA and the HKHS are responsible for the manpower needed for implementing the above four schemes under their charge. Both the URA and the HKHS indicate that on current showing they have sufficient manpower and financial resources to cope with applications made under the schemes. They will also review the situation from time to time to adjust relevant staffing arrangements timely. The time required for processing applications under the schemes would depend on factors such as whether the applicants have submitted relevant information timely and in a complete manner, and whether relevant procedures are completed on time; it is difficult to generalise the processing time required. The Government, the URA and the HKHS will pay close attention to the processing time and consider the need to set a suitable and feasible target processing time as needed.

(3) To enhance support for owners of aged buildings, the Home Affairs Department has implemented the Building Management Professional Advisory Service Scheme. Property management companies were commissioned to provide owners of aged buildings in need, in particular those of "three-nil" buildings, with a range of free professional advisory and follow-up services on building management, including assistance in formation of owners' corporation (OC), applying for relevant subsidies, and following up relevant tendering matters.

For OBB 2.0, FSIWSS and LIMSS, to assist owners of "three-nil" buildings in organising building repair works for participating in the three schemes, the URA has appointed a legal adviser to assist relevant owners to check the Deed of Mutual Covenant (DMC) of their buildings with a view to understanding whether or not the owners may, without an OC, pass a valid resolution at owners' meeting to resolve the carrying out of repair and improvement works at the common parts of the building based on the relevant clauses of the DMC.

Furthermore, to assist those eligible buildings wishing to form OCs and join the above three schemes in the capacity of OC, noting that OC formation often takes time, the URA has made special arrangement when handling such applications. Namely, these owners are allowed to submit only proof demonstrating their consensus to join the schemes before the application deadline, and to supplement relevant OC meeting documents before a specified time after the application deadline. The URA has also partnered with non-government-organisations (NGOs) in different districts to introduce these three schemes to owners of the target buildings in the district and assist them in making applications. In addition, to encourage owners to organise OC for carrying out the works under the above three schemes, the URA has from its resources set up a subsidy of \$3,000 to buildings successfully forming an OC to cover the cost for OC formation.

(4) The Government in partnership with the URA will process the eligible applications of OBB 2.0, FSIWSS and LIMSS in phases to avoid jacking up construction prices due to an upsurge in new works demand concurrently.

Currently, there are about 1 600 authorised persons, 440 registered structural engineers, 750 registered general building contractors and over 18 000 registered minor works contractors under the Buildings Ordinance, as well as about 860 registered fire service installation contractors. The manpower should be sufficient in providing various services on building and fire services improvement works necessary for OBB 2.0, FSIWSS, and BMGSE0.

We have also in conjunction with the Construction Industry Council (CIC) preliminarily reviewed labour supply. No significant shortage in workers' supply is envisaged noting the outlook of private market which is affected by the downward pressure on economy. Nevertheless, the Government will closely monitor the market supply in conjunction with the CIC and will step up workers' training as needed.

For LIMSS, there are at present 41 registered lift contractors in the market, which should suffice in taking up the additional works arising from

LIMSS. We estimate that the lift industry would need about 360 more lift workers in the coming six years. We have collaborated with the CIC to arrange suitable training schemes to attract new blood to join the lift industry thereby strengthening the workforce of the industry to handle the additional modernisation works.

Note 1: Viz. buildings which do not have an owners' corporation or residents' organisations, or having engaged any property management company.

Note 2: As application under OBB 2.0 is made on the basis of Deed of Mutual Covenant (DMC), and some buildings have more than one DMC to determine owners' rights and responsibilities; the number of applications is therefore greater than the number of buildings involved. In addition to the some 480 buildings approved as Category 1 buildings, the Buildings Department (BD) has also selected about 310 buildings as Category 2 buildings (note 7).

Note 3: Subsidy of the schemes will be released to the owners in accordance with the progress of actual works done. As the schemes only accepted applications in or after July 2018, and that the relevant works concern common parts of the buildings for which owners always need time to co-ordinate, subsidy under the schemes has yet been released to the owners as of end November 2019. The URA as the partner of the Government for the schemes will release relevant subsidy upon completion of required procedures.

Note 4: Granting of subsidies under the scheme is lift-based (not building-based).

Note 5: Applications are individual-based (not building-based).

Note 6: Including amount of grant released and committed to be released for the approved applications.

Note 7: Category 1 buildings cover those whose owners are prepared to take up the organisation of the prescribed inspection and repair works for at least the common parts of their buildings with a view to complying with the Mandatory Building Inspection Scheme (MBIS) requirements. Category 2 buildings cover those which have outstanding MBIS notice(s) but the owners concerned have difficulties in co-ordinating the prescribed inspection and repair works for the common parts of the buildings. The BD will select Category 2 buildings proactively on risk basis for exercising BD's statutory power to hire consultants and contractors to carry out the required works in default of the owners concerned, and recover the costs incurred from the owners. Eligible owners may seek to cover all or part of the costs incurred by claiming subsidies available to them under OBB 2.0.

Note 8: The Government announced in October 2019 its plan to enhance the BMGSEO, and rechristen it as "Building Maintenance Grant Scheme for Needy Owners". The URA will partner with the Government to implement the new scheme.