Enhancement of co-operation in legal services between HK and Mainland

A spokesman for the Department of Justice (DoJ) today (January 23) announced that consensus has been reached with the Ministry of Justice (MoJ) on new liberalisation measures in respect of legal services in the Mainland.

The Minister of Justice, Mr Fu Zhenghua, earlier led a delegation to visit the DoJ and held a meeting with the Secretary for Justice, Ms Teresa Cheng, SC. Both sides expressed their views on matters of mutual interest, including further enhancement of co-operation and exchange in legal services between the two places.

After the meeting, they signed a record of meeting mainly reflecting the consensus on the following new liberalisation measures: (1) extension of measures in the State Council's Notice relating to partnership associations set up between Mainland and Hong Kong law firms in the China (Guangdong) Pilot Free Trade Zone to the whole of Guangdong Province; (2) removal of the minimum capital injection ratio of 30 per cent by Hong Kong partner firms in the partnership associations set up between Mainland and Hong Kong law firms; and (3) allowing a Hong Kong legal practitioner to be retained as legal consultant by one to three Mainland law firms at the same time.

The spokesman added, "We understand that the MoJ together with relevant departments will endeavour to implement the relevant measures within this year. The DoJ will continue to maintain close liaison with the MoJ and relevant departments on further development."

LCQ13: Police's procedures and guidelines on handling arrested persons

Following is a question by the Dr Hon Cheng Chung-tai and a written reply by the Acting Secretary for Security, Mr Sonny Au, in the Legislative Council today (January 23):

Question:

It has been reported that in 2012, a taxi driver who became agitated and kept struggling when being arrested was dragged, by means of holding in a headlock, into a police car by police officers. The driver consequently suffered from a cervical vertebra dislocation and died after hospitalisation

for about one month. In October last year, a Coroner's Court held an inquest into the cause of death of that driver and the jury returned a verdict that he was "unlawfully killed". On the other hand, the Police have formed a working group dedicated to following up how the guidelines, procedures and training on the use of force can be improved. Regarding the use of force by police officers while discharging duties, will the Government inform this Council:

(1) given that the jury of the aforesaid death inquest has made four recommendations, including installing closed-circuit television cameras with voice recording function inside Emergency Unit vehicles and providing police officers with training on the technique for transferring arrested persons to police cars, whether the Police will adopt these recommendations;

(2) whether the Police will enhance the training of police officers, particularly young officers who have left the Police College not long ago, on how to control their emotions properly while discharging duties and exercise a high level of restraint in using force; and

(3) whether the Police will, in the light of the outcome of the aforesaid death inquest, update and make public the guidelines for police officers on the use of force?

Reply:

President,

ã€€ã€€With regard to the question by Dr Hon Cheng Chung-tai, the reply of the Security Bureau is as follows:

(1) The jury of the death inquest made the following four recommendations:

(i) installing closed-circuit television with voice recording function inside Emergency Unit vehicles;
(ii) training police officers on the technique of carrying arrested persons to police cars;
(iii) unless refused by the arrested persons, the Police should promptly inform their family members of their being arrested; and
(iv) in the course of arresting, should police officers become aware that they may have caused injury to the arrested persons, they should inform healthcare personnel and give details of the areas of possible injury as soon as possible.

Regarding the recommendation on installing closed-circuit television inside Emergency Unit vehicles, besides police officers and arrested persons, such vehicles are also used to transport other persons, such as witnesses and victims. Therefore, the Police must carefully assess the purpose and necessity of the measure as well as the consideration for privacy protection. The Police have set up a working group to further examine the recommendation. Meanwhile, the Police will also draw reference from relevant overseas experience and consult the Department of Justice where necessary.

Regarding the recommendation of providing police officers with training on the technique for carrying arrested persons, currently every newly recruited or serving police officer must undergo rigorous training on the use of force, including how to handle suspects resisting arrest as well as the basic technique and method for carrying arrested persons under normal situation. The Police will continue to explore the jury's recommendation in this regard with a view to catering for the officers' needs in handling different situations.

Lastly, the Coroner's Court recommended that the Police should inform the family members of the arrested persons as soon as possible and notify healthcare personnel promptly as and when necessary.

Currently, the Police have in place established procedures and guidelines on the handling of arrested persons. The Police will, as soon as possible, inform the arrested person of the fact that he/she is under arrest, as well as the factual grounds and the reasons for the arrest. A notice listing the rights of an arrested person will be served on and signed by every arrested person. It is also specified in the notice that an arrested person has the right of requesting the Police to inform his/her friends or relatives of his/her detention at a police station. An arrested person will also be given a reasonable opportunity to make a phone call to a friend or relative and be visited. An arrested person has the right to not inform his/her friend or relative, for example, an arrested person allegedly involved in sexual offence may choose not to inform his/her family member.

The Police respect the rights of arrested persons and will ensure that they have the right of receiving medical attention. If an arrested person is injured on the spot or during the arrest, arrangement will be made to send him/her to the hospital directly. If he/she needs to be hospitalised and requests to inform his/her friends or relatives accordingly, appropriate arrangements will be made by the Police. If he/she has lapsed into a coma and is not accompanied by friends or relatives, the Police will normally ascertain his/her identity and try their best to notify his/her friends or relatives as early as possible.

Relevant formations of the Police will continue to study and follow up the recommendations of the Coroner's Court proactively.

(2) Starting from foundation training, new recruits are provided with courses on policing psychology, emotion regulation and stress management. In addition, the Police also provide psychological competency training in development and promotion courses and training days conducted by respective formations, etc., which covers various aspects such as conflict management, emotion regulation and adjustment, and stress management.

To further strengthen the training, the Police College conducted workshops on Emotional Fitness for officers of the ranks from Police Constable to Commissioner Rank Officer on a comprehensive scale starting from 2014, with a view to promoting among officers resilience and good

psychological quality. The Police College has produced a total of six training day packages, providing all police officers with continuous training in emotion management.

The Police's training in psychological quality and stress management has been incorporated into a number of courses and covers different ranks. The modes of teaching are also well diversified, covering lectures, tutorials, simulation training, e-learning, field training and mobile applications. The Police College will review from time to time the contents of training, and design and provide additional thematic training for police officers based on operational and training needs in a timely manner.

Regarding the use of force, every newly recruited or serving police officer has to go through rigorous training on the use of force, so that they may fully understand how to use different levels of force in a safe and effective manner, including the use of verbal advice/verbal control, empty-hand control, oleoresin capsicum foam, batons and firearms, as a means to achieve the relevant lawful purpose. Police officers will exercise a high level of restraint at all times and cease to use force once the purpose is achieved.

(3) The Police have established guidelines on the use of force. Police officers will use minimum force as appropriate only when it is absolutely necessary and there are no other means to accomplish the lawful duty. Police officers will give verbal warning prior to the use of force as far as circumstances permit, while the person(s) being warned will be given every opportunity, whenever practicable, to obey police orders before force is used. Once that purpose is achieved, the Police will cease to use force.

The Police review their operational contingency strategies, guidelines and training from time to time. A working group led by an Assistant Commissioner and comprising staff and departmental representatives was formed in November 2017 to follow up matters relating to the modification of guidelines, procedures and training on the use of force. The work of the working group is currently in progress.

Since the Police's guidelines on the use of force involve operational details and the Police's tactical deployments, it is not appropriate for disclosure to the public or else it may undermine the capability and efficacy of Police operations.

LCQ12: Feed-in Tariff

Following is a question by the Hon Martin Liao and a written reply by the Secretary for the Environment, Mr Wong Kam-sing, in the Legislative Council today (January 23):

Question:

To promote the development of renewable energy (RE), the Government has introduced the Feed-in Tariff (FiT). It has been reported that following the authorities' relaxation of the height restriction on the solar photovoltaic (PV) systems to be installed on rooftops of village houses, there has been a surge in the number of FiT applications. Nevertheless, quite a number of applications have been hindered by issues such as the proposed generating capacity has exceeded the current capacity of the power grids for supplying electricity to the customer or district concerned, resulting in certain FiT applications being approved with a lower generating capacity only. This has seriously upset the plans of the applicants and the relevant industries and even dampened their desire to develop RE for electricity generation. In this connection, will the Government inform this Council:

(1) if it knows, since the introduction of FiT, (i) the respective numbers of applications received by each power company, (ii) the vetting and approval status of the applications (including having been approved, being processed, having been rejected, etc.), (iii) the customer category to which the applicants belonged, (iv) the category of RE (i.e. solar energy or wind energy) involved, and (v) the number and details of the applications for which revisions to the scale of electricity generation were necessary (including the originally proposed generating capacity, the revised generating capacity as requested by the power company concerned, and the reasons for the revision);

(2) whether it envisaged, when considering and formulating FiT, the issue that the generating capacities of some applications need to be lowered as appropriate because they are too large; if so, of the details (including the percentage of the relevant cases and their impact on the output of electricity to be generated by RE) and the solutions;

(3) whether targeted improvement measures are in place to address the issues mentioned in (2); if so, of the details (including actions to be taken and the timetable); if not, the reasons for that; and

(4) as the Government has recognised that promoting the development of RE is an integral part of mitigating climate change, whether the authorities will consider adopting more aggressive measures to encourage the installation of solar PV systems in all suitable buildings and promote the healthy development of local RE industries like the solar energy industry, such as by making reference to the policies and measures implemented in other countries and regions for supporting the development of the solar power generation industry and streamlining the application procedure for installing solar PV systems on building rooftops under the premise of conformity with the safety principles, offering tax concessions to households which have installed such systems, promoting the development of the leasing market for such systems, and setting up investment funds for subscription by the public for developing RE industries; if so, of the details; if not, the reasons for that?

Reply:

President,

(1) The CLP Power Hong Kong Limited (CLP) has started receiving applications for the Feed-in Tariff (FiT) Scheme since May 2018, and officially commenced the Scheme since October 2018. According to the information provided by CLP, as at end 2018, CLP has received over 1 400 FiT applications among which 98 per cent involve solar renewable energy (RE) systems and the remaining 2 per cent are wind and wind/solar hybrid RE systems. Among the applications received, over 70 per cent involve installation of RE systems at residential premises and over 20 per cent involve that at non-residential premises. Among the above-mentioned applications, the RE systems in 78 applications have already been connected to the CLP's network and FiT payment is being received for the electricity generated by such systems. For the remaining applications, CLP has initially approved (Note) about 80 per cent and has not rejected any applications as at today. In addition, among the applications received, the generating capacity approved in about 160 applications is lower than that applied with details as follows:

Reduction in the generating capacity approved when compared to the generating capacity applied	Percentage (About 160 applications in total)
> 0% – ≤ 40%	33%
> 40% – ≤ 70%	30%
> 70% – < 100%	37%

Note: Applications which have been initially approved refer to those applications which have been accepted by the power company and the applicants have been notified of the applicable FiT rates; and applicants can commence installing the RE systems.

CLP needs to adjust the generating capacity in individual applications mainly due to the following three reasons:

(i) The systems under application are located outside the existing network (such as uncultivated land). If a network has to be laid, the network may have to route through undeveloped land and road, and the works and applications involved will be complicated and time-consuming. Moreover, the addition of a network involves relatively large amount of investments, and must also take into account the maintenance of a safe and reliable power supply;

(ii) There are only basic power supply facilities (such as overhead electricity lines) in the areas where the systems under application are located and the capacity for supplying electricity of the network concerned cannot support the capacity of the systems under application. Enhancement of the network may also be subject to physical constraints (such as in cases where electrical cables have to be laid on private land, consent of the owner(s) of the site(s) concerned have to be obtained; and there may not be

sufficient space to accommodate electrical cables with higher capacity if the underground space concerned has already been fully occupied by the facilities of other public utilities, etc.); and

(iii) Connecting RE system with a larger capacity or many smaller RE systems densely within the same area to a CLP's network will increase the supply voltage and may even exceed the allowable voltage limit of the existing power supply facilities within the area. This may result in voltage instability, and may ultimately affect the stability of power supply to other customers of the same area.

The Hongkong Electric Company Limited (HEC) has started receiving applications for FiT Scheme since August 2018, and officially commenced the Scheme since January 2019. According to the information provided by HEC, as at end 2018, HEC has received over 60 FiT applications among which 98 per cent involve solar RE systems and the remaining 2 per cent are wind/solar hybrid RE systems. Among the applications received, applications involving installation of RE systems at residential and non-residential premises each accounts for about half of the applications. Among the above-mentioned applications, the RE systems in seven applications have already been connected to the HEC's network and FiT payment is being received for the electricity generated by such systems. For the remaining applications, HEC has approved about 20 per cent. As at today, HEC has neither rejected any application nor adjusted the generating capacity of any application.

(2) and (3) FiT is a newly introduced measure in Hong Kong and there are inevitably some issues which have to be dealt with by the power companies in the initial period of implementation. In introducing the FiT Scheme, power companies also have to maintain the safe and reliable power supply at the same time; and those individuals and organisations interested in the FiT Scheme would also need some time to familiarise with the Scheme's and operational details.

Before the introduction of the FiT Scheme, CLP has already expected that the generating capacity in some individual cases may be too large and have to be adjusted. Therefore, CLP has already clearly stipulated the eligibility requirements in the application information on its FiT Scheme, including the total generating capacity of the RE systems to be connected to the network should be up to 1 MW; and the systems can be connected to the CLP's network without the need to increase the capacity of or reinforce the network by CLP.

At present, the number of applications in which the generating capacity approved by CLP is lower than that applied amounts to about 10 per cent of the total applications received. There are different reasons for having to adjust the generating capacity in different cases. CLP has already arranged dedicated customer service managers to follow up each application, and suggest different technical solutions with a view to resolving the matter, including carefully consider the electricity demand arising from the development of the areas concerned (including the demand for RE development) having regard to individual circumstances, and consider whether and if so how to lay or reinforce network. If the solution involves laying or reinforcing the network, apart from considerations on cost-effectiveness and impact on

tariff, the works and applications involved will be complicated and time-consuming, and will not be completed within a short time frame.

We have already expressed concern on CLP's adjustment of the generating capacity in individual FiT applications, and are further obtaining information on their approval criteria and follow-up work. We will continue to closely monitor the implementation of the FiT Scheme and solicit the views of stakeholders, and proactively discuss with the two power companies to address the relevant issues with a view to improving the arrangements of the Scheme such that the Scheme can assist in combating climate change through facilitating the private sector in developing RE.

(4) We have already announced under the 2018 Policy Address that the Government will continue to take the lead to develop RE in a systematic manner so as to reduce carbon emissions thereby mitigating climate change.

For the public sector, we have earmarked $1 billion to support the development of small-scale RE projects by bureaux and departments. As for large-scale RE projects, we are taking forward installation of large-scale solar photovoltaic (PV) systems at suitable locations in reservoirs and landfills.

For the private sector, we have been creating the conditions that are conducive to encouraging the private sector to consider adopting RE. Apart from providing financial incentives through the introduction of the FiT Scheme, we have also recently introduced a series of new initiatives to provide further support and facilitation to individuals and organisations who/which wish to develop RE. For example, we have suitably relaxed the restrictions such that subject to the fulfilment of specified conditions, solar PV systems including its supporting structures with height not higher than 2.5 metres can be installed on the rooftop of New Territories Exempted Houses without seeking the permission from the Lands Department or the Buildings Department (BD). As for owners of other private buildings, apart from erecting structures for supporting PV systems in accordance with the specific minor works items under the existing Minor Works Control System (MWCS), they may also appoint an Authorised Person to submit building plans for BD's approval on the erection of PV system supporting structures if such exceed the 1.5 metres height requirement under the MWCS. Subject to the design and relevant circumstances, BD may consider disregarding the space occupied by the systems in the calculation of total gross floor area. In addition, we are pursuing legislative amendments to provide exemption from the requirements to apply for business registration and pay profits tax in respect of participation in and the payments received under the FiT Scheme, introducing a programme to assist schools (except government and profit-making schools) and non-governmental welfare organisations in installing small-scale RE systems, revamping the HK RE Net and setting up an enquiry hotline, etc.. We have also noticed that there are companies providing individuals or organisations with different models of investment in solar PV systems. Individuals or organsiations who/which wish to develop RE may consider different modes of participating in the FiT Scheme having regard to their own circumstances.

We will continue to encourage stakeholders to participate in the development of RE, and liaise with them to understand the concerns of different sectors and formulate further facilitation and support measures to address these concerns such that we may better encourage the realisation of RE potential in different sectors of the community.

Fraudulent websites related to China CITIC Bank International Limited

The following is issued on behalf of the Hong Kong Monetary Authority:

The Hong Kong Monetary Authority (HKMA) wishes to alert members of the public to a press release issued by China CITIC Bank International Limited on fraudulent websites, which has been reported to the HKMA. Hyperlink to the press release is available on the HKMA website for ease of reference by members of the public.

Anyone who has provided his or her personal information to the websites concerned or has conducted any financial transactions through the websites should contact the bank concerned using the contact information provided in the press release, and report to the Police or contact the Cyber Security and Technology Crime Bureau of the Hong Kong Police Force at 2860 5012.

LCQ9: Compliance checks and compliance investigations conducted by Office of Privacy Commissioner for Personal Data

Following is a question by the Hon Lam Cheuk-ting and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (January 23):

Question:

Cathay Pacific Airways Limited announced on October 24 last year a leakage of the personal data of more than nine million passengers. The Office of the Privacy Commissioner for Personal Data (PCPD) announced on the following day and on November 5 respectively that it would initiate a

compliance check on the incident and a compliance investigation against the company. Besides, there are comments that the number of compliance investigations initiated and the number of investigation reports published by PCPD in recent years have decreased drastically when compared with those before then. In response, PCPD stated that in accordance with the relevant legislation, a compliance investigation report would only be published where the Privacy Commissioner for Personal Data (Privacy Commissioner) was of the opinion that it was in the public interest to do so. Upon the completion of significant compliance checks or compliance investigations, PCPD would issue press statements, and receive and respond to media enquiries, thereby achieving the same effect as publishing an investigation report without employing the practice of "naming and shaming" the party investigated. In this connection, will the Government inform this Council if it knows:

(1) the differences between a compliance check and a compliance investigation, including those in the areas of the relevant procedure and follow-up actions;

(2) the respective numbers and details (including the topics, the dates on which the reports were published (if any) and the follow-up actions taken) of the compliance checks and compliance investigations completed by the incumbent Privacy Commissioner and the preceding two Privacy Commissioners during their terms of office;

(3) whether PCPD has assessed if its refrainment from adopting the practice of naming the organisations that have breached the data protection principles has undermined the effect of making other organisations to stay vigilant that may be achieved by PCPD conducting checks or investigations; and

(4) the criteria adopted by the Privacy Commissioner for determining whether it is in the public interest to publish a certain compliance investigation report?

Reply:

President,

The Hong Kong Special Administrative Region Government is highly concerned about the data breach incident of Cathay Pacific Airways. Currently, the Office of the Privacy Commissioner for Personal Data (PCPD) has initiated a compliance investigation under Section 38 of the Personal Data (Privacy) Ordinance (PDPO) in the wake of the incident. After consulting the PCPD, reply to various parts of the question is as follows:

(1) The PCPD has developed a set of procedures for handling data breach incidents. Upon receiving notification on a data breach incident, the PCPD will commence a compliance check to find out the facts and ascertain causes of the data leakage, and to evaluate the effectiveness of the remedial actions taken or to be taken by the organisations concerned. The PCPD will also advise and assist the organisations concerned in taking timely remedial measures to protect the interests of those who were affected. Having regard to the result of the compliance check, if the Privacy Commissioner for

Personal Data (Privacy Commissioner) has reasonable grounds to believe that there may be a contravention of the requirements under the PDPO, he will initiate a compliance investigation under Section 38 of the Ordinance. The Privacy Commissioner is empowered under the PDPO to summon relevant persons to furnish evidence, enter premises to inspect personal data systems and collect evidence, among others, for the conduct of compliance investigations. Depending on the result of the compliance investigation, the PCPD may issue an enforcement notice to the organisations concerned.

(2) The numbers of compliance checks conducted from 2005/06 onwards, as set out in Annex 1, are summarised as follows:

Year	Average number of cases of compliance check per year
2005/06 – 2009/10 (5 years)	100
2010/11 – 2014/15 (5 years)	180
2015/16 – 2018 (3 years and 9 months)	272

There are many different types of compliance check cases. Generally speaking, these cases mainly involve the collection, accuracy, retention, use, access to and security of data in industries such as finance, education, retail, government departments and public organisations.

The numbers of compliance investigations from 2005/06 onwards and the investigation reports published in the same period are set out at Annex 2 and Annex 3 respectively. A summary is given below:

Year	Average number of cases of compliance investigations per year
2005/06 – 2009/10 (5 years)	4.4
2010/11 – 2014/15 (5 years)	29.8
2015/16 – 2018 (3 years and 9 months)	22.4

(3) The recent trend of data breach incidents has shifted from mostly improper collection and use of data in the past to breach of data security, such as data leakage and hacker attacks. The former is more discernible in terms of the nature of and liability for data breach. To facilitate cooperation from the organisations concerned, the PCPD has, since 2016, ceased to adopt the "naming and shaming" practice under normal circumstances. By doing so, the PCPD has been able to understand the detailed facts as soon as possible and stands a better chance of ascertaining whether there are reasonable grounds for the Privacy Commissioner to be of the opinion that

there exists a contravention under the PDPOã€€before a compliance investigation is initiated. It also enables the organisations concerned to take remedial measures for safeguarding data privacy of individuals concerned (customers and consumers) at the earliest possible time. As a regulatory body, the PCPD discharges its statutory duties through result-based approaches. Apart from enforcement and sanctions, the PCPD also provide organisations with guidance, practical assistance and support on compliance and good practices of data protection.

(4) According to Section 48(2) of the PDPO, the Privacy Commissioner may, after completing an investigation and if he is of the opinion that it is in the public interest, publish a report setting out the result of the investigation, any recommendations or other comments arising from the investigation as he thinks fit to make. Since there is no definition of "public interest" in the PDPO, the Privacy Commissioner will, having regard to individual circumstances and Section 48(2) of the PDPO, deliberate on whether to publish an investigation report on compliance investigation while considering judgments and guidelines on relevant cases. Factors for consideration include but are not limited to the following:

1. the nature and circumstances of the incident in question;
2. the severity of the incident in question, including the amount and nature of personal data involved, the number of people affected and the impact on them;
3. whether the incident in question is minor or technical in nature;
4. the degree of culpability of the offender concerned;
5. whether there is cooperation between the offender and the regulatory body and whether the offender has demonstrated remorse, made commitment, compensated the victim(s), etc.;
6. the likely final disposition of the incident in question;
7. whether a new problem is embodied in the incident;
8. whether publishing a report can achieve an educational purpose or a deterrent effect or prevent the recurrence of similar incidents;
9. the availability and efficacy of alternatives to publishing a report, such as cautions, undertakings or other acceptable approaches for handling the incident;
10. information on the incident in question is available in the public domain and publishing a report allows the public to learn the truth or play a monitoring role; and
11. making public the report concerned is conducive to debate about a matter of common concern.

Apart from publishing a report on compliance investigation, the PCPD will also make public the result of completed compliance investigation through its annual report and/or media statements.