

LCQ4: Bringing Chief Executive within ambit of sections 3 and 8 of Prevention of Bribery Ordinance

Following is a question by the Hon Dennis Kwok and a reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (January 23):

Question:

The Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests submitted its report to the Government in May 2012, recommending the enactment of legislation to provide that the Chief Executive (CE) must obtain permission from a statutory independent committee prior to the acceptance of advantages, so as to make the system under section 3 of the Prevention of Bribery Ordinance (POBO) applicable to CE. In addition, the incumbent CE has undertaken in her election manifesto that she would "resolve as soon as possible those constitutional and legal issues aiming at amending the Prevention of Bribery Ordinance to extend the scope of sections 3 and 8 to cover the Chief Executive". In his reply to a question raised by a Member of this Council on July 5, 2017, the Chief Secretary for Administration (CS) indicated that "upon completion of the study on such constitutional and legal issues, the Government will initiate the legislative procedure as early as possible". CS also stated that, in respect of a relevant private bill proposed by me, the Government would "examine whether the bill involves public expenditure, the political system, government operation, and so on". Regarding the efforts to amend POBO, will the Government inform this Council:

(1) whether it will propose legislative amendments in accordance with the proposal made by the Review Committee; if not, of the reasons for that, and the alternative proposals under consideration;

(2) whether it will complete the legislative amendment exercise within the current term of the Government; if so, of the legislative timetable; if not, the reasons for that; and

(3) whether it will undertake that it will, for the period from the present to the time of submission of the proposed legislative amendments to this Council, report on a half-yearly basis the progress of the legislative amendment exercise to this Council or any of its committees; if not, of the reasons for that?

Reply:

President,

Since the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests (the IRC) submitted its report in May 2012, the Government has been actively following up on the IRC's recommendations, with a view to enhancing the robustness of the system concerned to effectively prevent and properly deal with potential conflicts of interests involving public officials.

The IRC recommended in its report that amendments be made to sections 3 and 8 of the Prevention of Bribery Ordinance (Cap 201) (POBO) to extend their application to the Chief Executive (CE). As the head of the Hong Kong Special Administrative Region (HKSAR) and the HKSAR Government, CE must be a person of integrity and dedicated to his/her duties according to Article 47 of the Basic Law. CE agrees that there should be a good system to maintain and strengthen public confidence in the integrity of the Government. At present, CE observes the provisions in the Code for Officials under the Political Appointment System and the declaration system applicable to Members of the Executive Council (ExCo) in declaring her financial and other interests. The open part of her declaration has been uploaded to the websites of CE's Office and ExCo for public inspection. The information related to gifts presented to and sponsorships received by CE has also been uploaded to the website of CE's office.

According to section 3 of POBO, any "prescribed officer" (including politically appointed official and civil servant) who, without CE's permission, solicits or accepts any advantage shall be guilty of a criminal offence. Also, section 8 of POBO stipulates that any person who, without lawful authority or reasonable excuse, while having dealings with any government department or public body, offers advantages to any "public servant" (including "prescribed officer") employed in that department or by that public body, shall be guilty of an offence.

Amending these two sections for application to CE has implications on the provisions about the political structure of HKSAR and CE's constitutional status in HKSAR as prescribed in the Basic Law. The relevant constitutional and legal requirements as well as operational issues must be studied in a holistic manner.

Under Articles 15 and 45 of the Basic Law, CE shall be selected by election held in HKSAR and be appointed by the Central People's Government. Article 43 of the Basic Law stipulates that CE shall be the head of HKSAR, and shall be accountable to the Central People's Government and HKSAR in accordance with the provisions of the Basic Law. Pursuant to Article 60 of the Basic Law, CE shall also be the head of the Government of HKSAR. Hence CE is both the head of HKSAR and the head of the HKSAR Government. As indicated by the IRC in its report, any regime that gives permission to CE for soliciting or accepting advantages shall take into account the unique constitutional status of the office of CE under the Basic Law. The IRC recommended that a specialised independent committee, with members jointly appointed by the Chief Justice and the President of the Legislative Council, should be set up to give general or special permission to CE for soliciting and accepting advantages. This, however, may not be consistent with CE's

unique constitutional status.

Furthermore, given that CE is the head of the HKSAR Government, amending section 8 to make it applicable to CE could have the effect of making it an offence potentially for any persons having dealings of any kind with any government department to offer an advantage to CE. In this connection, the IRC recommended that the reach of the statutory provisions would not include any person offering an advantage to CE where such acceptance of the advantage by CE is covered by a given general permission. But again, if such general permission is to be granted by a specialised independent committee established according to the IRC's recommendation, the above-mentioned constitutional and legal implications remain.

In fact, the existing POBO already contains certain provisions which effectively regulate the alleged corrupt acts of CE. Apart from such universally-applicable provisions as sections 6, 7 and 9 of POBO, sections 4, 5 and 10 are also applicable to CE for regulating respectively any bribery acts of soliciting and accepting advantages and possession of unexplained properties. Under these provisions, any person who offers any bribe to CE shall be guilty of an offence as well. Meanwhile, CE is subject to the regulation of bribery offences under the common law, and the offence of "misconduct in public office" under the common law also applies to CE.

The Government is now studying carefully the relevant issues on amending POBO to extend the application of sections 3 and 8 to CE in accordance with the constitutional framework set out in the Basic Law and the existing legal requirements. On completion of the study, the Government will report its findings to the Legislative Council (LegCo) as early as possible. Since the study is still in progress, the Government does not have a specific date for submitting the report or introducing the amendment bill on POBO to LegCo at this stage.

Thank you, President.

Missing man in Mong Kok located

A man who went missing in Mong Kok has been located.

Yeung Chun-wai, aged 24, went missing after he was last seen at MTR Mong Kok Station on January 19 afternoon. His family made a report to Police on January 21.

The man returned to his residence last night (January 22). He sustained no injuries and no suspicious circumstances were detected.

LCQ7: Factory canteens

Following is a question by the Hon Tommy Cheung and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (January 23):

Question:

Under the Food Business Regulation (Cap 132X), a factory canteen may only serve factory employees who work in the building where the canteen is located. The Food and Environmental Hygiene Department implemented new conditions for the Factory Canteen Licence (FCL) in February 2018 to stipulate that (i) a licensee must display a notice reading "FACTORY EMPLOYEES OF THIS BUILDING ONLY" outside each entrance of the canteen, and (ii) a factory canteen may only serve persons who possess employee identity cards issued by their employers or other acceptable proof. Some proprietors of factory canteens have relayed that the aforesaid requirements have led to a plunge in their businesses. They had applied for converting their canteens into general restaurants but their applications were rejected on grounds that the industrial buildings in which their canteens were located did not meet the fire safety and building structure requirements applicable to general restaurants. They have also pointed out that with the gradual decline of industries in Hong Kong, the existing legislation that regulates factory canteens is obviously outdated. On the other hand, while the Government has, since 2010, implemented measures to revitalise industrial buildings under which owners are permitted to convert or redevelop some industrial buildings for non-industrial uses (such as offices, art studios, cultural and creative industries, light industries, logistics), the authorities have not correspondingly adjusted the licensing conditions of FCL to dovetail with such measures. In this connection, will the Government inform this Council:

(1) whether it will, in view of changing times and in order to dovetail with the measures to revitalise industrial buildings, amend the legislation to the effect that a factory canteen is permitted to serve, in addition to factory employees who work in the industrial building where the canteen is located, also other employees who work in the same industrial building as well as the employees of those organisations which have business dealings with the organisations situated in the industrial building; if so, of the details; if not, the reasons for that;

(2) of the respective numbers of applications for converting factory canteens into general restaurants received, approved and rejected by the authorities in the past eight years; if some applications were rejected, the main reasons for that; and the average processing time taken in respect of the approved applications;

(3) of the respective current numbers of industrial buildings and licensed

factory canteens in Hong Kong, and whether it knows the number of factories that are in active operation in industrial buildings and the number of their employees, with a breakdown by District Council district; and

(4) whether it has compiled statistics on the numbers of units in industrial buildings used for non-industrial uses in each of the past three years and the numbers of employees involved; if so, of the details; if not, whether it will compile such statistics, so as to grasp the clientele size of factory canteens?

Reply:

President,

Having consulted the Development Bureau and the Labour and Welfare Bureau, the reply to the various parts of the question is as follows:

(1) Under the Food Business Regulation (Cap 132X), a factory canteen licence (FCL) must be obtained from the Food and Environmental Hygiene Department (FEHD) for operation of food business in a factory building which involves the sale or supply of meals or drinks for consumption on the premises by persons employed in the factory building concerned. The FCL was introduced to facilitate factory workers to take meals.

Industrial activities often involve the loading, unloading, storage and use of dangerous goods. The risks of fire hazards and accidents are therefore far greater in factory buildings than in commercial/composite buildings. Members of the public who do not work in such factory buildings are not familiar with their interior settings. They may be exposed to heightened danger if they are allowed to patronise factory canteens given they may not realise the potential dangers and know the escape routes in a factory building.

In terms of food safety, licensed factory canteens are subject to less stringent requirements than general restaurants with regard to the provision of food room and sanitary fitments as the types of food provided by factory canteens and their mode of operation are relatively simple. If factory canteens are allowed to serve members of the public, the existing provision of food room and sanitary fitments of a factory canteen may not be capable of coping with the substantial need for food storage and stock changes due to a vast increase in customers. The resulting food safety and hygiene implications will also constitute potential food safety hazards to customers.

In view of the above, the Government has no plan to relax the relevant licensing requirement, in other words, a factory canteen can only serve employees in the factory building where the canteen is situated.

(2) The respective numbers of FCL and General Restaurant Licence (GRL) applications received, approved, withdrawn/abandoned and rejected in the past eight years are set out at Annex 1. FEHD does not have the number of GRL applications lodged by licensed factory canteens.

(3) and (4) The distribution of factory buildings and licensed factory canteens in various districts is set out at Annex 2 and Annex 3 respectively. The Development Bureau and the Labour and Welfare Bureau do not maintain the number of factories in operation currently, the number of factory units used for non-industrial purposes in factory buildings and the number of employees concerned.

LCQ1: Protection of animal rights, interests and welfare

Following is a question by the Hon Kwong Chun-yu and a reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (January 23):

Question:

Regarding the protection of animal rights, interests and welfare, will the Government inform this Council:

(1) as it has been mentioned in the 2017 Policy Agenda that the Government would "study the existing legislation related to animal welfare, and explore introducing a concept of positive duty of care on animal keepers", of the latest progress of that task, the approach for amending the law, and the timetable for public consultation in this respect;

(2) given that while there are now over 540 000 cats and dogs being kept as pets in Hong Kong according to an estimation made in a consultancy report, most means of public transport currently prohibit people carrying animals with them from boarding, whether the authorities have plans to explore with the relevant public transport operators permitting passengers to carry animals with them when travelling in designated train compartments and in franchised buses of certain routes, so as to make it more convenient for pets to travel with their owners; if so, of the details and timetable; if not, the reasons for that; and

(3) given that the Leisure and Cultural Services Department has planned to turn six existing parks into "Inclusive Parks for Pets" and launched a one-year trial scheme this month, but some members of the public have criticised that the relevant facilities are unavailable in such parks, whether the authorities have plans to make improvements and expand the trial scheme to cover every District Council district; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Transport and Housing Bureau and the Home Affairs Bureau, my reply to various parts of the question is as follows:

(1) To further safeguard animal welfare, we are mapping out the major direction and drawing up preliminary proposals for amending the existing legislation, including reviewing the maximum penalty levels and introducing a concept of positive duty of care on animal keepers, i.e. requiring animal keepers to take all necessary measures to protect the welfare of their animals, such as providing proper care and sufficient space for their animals and preventing them from disease, injury or suffering, etc. In the past few months, the Food and Health Bureau and the Agriculture, Fisheries and Conservation Department (AFCD) met different stakeholders and introduced to them the preliminary legislative amendment proposals. At present, AFCD is considering views received and drafting the consultation document, with a view to consulting the public in the second quarter in 2019.

(2) Public transport services have heavy usage in Hong Kong, which account for around 90 per cent of all passenger journeys and carry over 12 million passenger trips per day on average. At present, the legislation regulating different modes of public transport allows the visually impaired to board with guide dogs. The legislation also allows operators of public light buses, taxis, non-franchised buses and ferries to decide themselves whether passengers are permitted to board with pets. The Transport Department will continue to make use of the established liaison channels to encourage these operators to provide appropriate assistance to those who need to travel with pets.

As regards the railway and franchised buses, the by-laws and regulations concerned prohibit passengers from boarding trains and franchised buses with pets, except for the visually impaired accompanied by guide dogs. As the patronage of MTR and franchised buses is high and the space in their compartments is limited, they can be rather congested most of the time. In considering whether passengers are to be permitted to use public transport services with pets, the Government has to balance the needs of different stakeholders, including the perspective of protecting animal welfare, considering the reaction of pets in a crowded and confined environment as well as the impact on other passengers. The Government will continue to keep in view the public views on this issue so as to consider whether there should be any change to the existing arrangement.

(3) The Leisure and Cultural Services Department (LCSD) is open-minded about, and adopts a positive attitude to, suggestions of opening up its venues as pet gardens. LCSD has been in close liaison with District Councils in identifying suitable venues for designation as pet gardens. They are generally set up at the designated area of the parks. The number of venues with pet garden managed by LCSD has increased from 19 in 2010 to 49 at present.

In recent years, quite a number of members of the public hope that LCSD can open up the parks in entirety for them to visit with pets. In response to requests from the public, the Trial Scheme of "Inclusive Park for Pets" (the Trial Scheme) was launched by LCSD in January 2019, under which six suitable parks (including Victoria Peak Garden in Central and Western District, Tong Yam Street Hillside Sitting-out Area in Sham Shui Po, Kai Tak Runway Park in Kowloon City, Shing Mun River Promenade Garden No. 3 (Area B) in Sha Tin, Wang Yip Street South Rest Garden in Yuen Long and Tai Wo Hau Road Playground in Kwai Tsing) were selected from various districts across the territory for opening up the whole venues for members of the public to enter and use the venues with pets, with a view to enabling the use of park facilities by different users in an inclusive environment. LCSD had consulted the District Councils concerned on the locations and the relevant arrangements of the Trial Scheme and obtained their support. LCSD will review the effectiveness of the Trial Scheme one year after its implementation with a view to considering whether to provide "Inclusive Park for Pets" in more districts.

As a new attempt of LCSD, the Trial Scheme aims at enabling park users and members of the public who bring their pets into LCSD's parks to use park facilities together in an inclusive environment, thereby promoting exchanges and integration in the community. As the "Inclusive Parks for Pets" are not specifically designed for use by pets, there are less pet facilities provided compared with pet gardens. Nonetheless, additional dog excreta collection bins have been provided and cleansing efforts have been stepped up by LCSD in the "Inclusive Parks for Pets". At the same time, LCSD is actively examining the feasibility of providing hand-washing facilities in two "Inclusive Parks for Pets" which have not yet been provided with such facilities for the convenience of pet owners. LCSD will continue to listen to views of the public in an effort to enhance the supporting facilities in the "Inclusive Park for Pets".

More application forms for Caring and Sharing Scheme to be available

In view of the public demand, additional Chinese application forms for the Caring and Sharing Scheme will be available in batches from today (January 23) for collection by members of the public at the Home Affairs Enquiry Centres of the Home Affairs Department, the Working Family Allowance Office and the Student Finance Office of the Working Family and Student Financial Assistance Agency.

"About 900 000 of the first tranche of 1 million Chinese application forms have been distributed so far and additional copies will be available in batches in the coming days. Application forms can also be downloaded from the website of the Scheme (css.gov.hk)," a Government spokesman said.

"According to the Scheme, the application period will begin on February 1 and run for three months until April 30. This is to ensure that the general public will have ample time to fill in and submit the application forms," the spokesman added.