

Effective Exchange Rate Index

The effective exchange rate index for the Hong Kong dollar on Wednesday, February 24, 2021 is 100.5 (same as yesterday's index).

LCQ3: Regulating food trade

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 (February 24):

Question:

One of the functions of the Food and Environmental Hygiene Department (FEHD) is to regulate the food trade, including issuing licences to food premises and inspecting such premises. In this connection, will the Government inform this Council:

(1) of the number of inspections of licensed food premises conducted by the FEHD last year, with a breakdown by type of premises;

(2) of the respective numbers of the various types of food business licences which are valid at present;

(3) of the respective numbers of applications for transfer of food business licences received and approved by the FEHD last year; and

(4) of the respective numbers of cases, found by the FEHD when conducting the inspections mentioned in (1), in which the premises concerned (a) were not open for business (among such cases, the respective numbers of premises which were not open (i) for the reason that they were under renovation and (ii) for other reasons (not including those premises which had been asked to close for business by the Government due to the epidemic)), and (b) had changed owners but approval had not been given for the relevant applications for licence transfer; if such figures are unavailable, whether it has plans to compile relevant statistics; if so, of the details; if not, the reasons for that?

Reply:

President,

In accordance with the regulations under the Public Health and Municipal Services Ordinance (Cap. 132), including the Food Business Regulation (Cap. 132X), the Frozen Confections Regulation (Cap. 132AC) and the Milk Regulation

(Cap. 132AQ), every person who carries on any food business shall obtain a relevant licence from the Food and Environmental Hygiene Department (FEHD). In addition, any person who intends to operate food business for the sale of restricted food shall obtain a permit relevant to the proposed business before commencement of such business. All food premises holding licences or permits issued by the FEHD are subject to the regulation of the FEHD, and a licensee or permittee must obtain the FEHD's approval before transferring the licence or permit to any other person. Health inspectorate officers of the FEHD adopt a risk-based approach in conducting inspections to licensed food premises, with a view to safeguarding food safety and environmental hygiene.

My reply to the question raised by the Member is as follows:

(1) and (4) The FEHD conducted over 207 000 inspections to licensed and permitted food premises in 2020. The department does not have separate breakdown figures on the inspections by types of premises, the number of licensed food premises which were not open for business during the inspections, and the number of premises which had changed owners prior to obtaining approvals for the relevant applications for licence transfer. The FEHD is planning to enhance the existing Licensing Management Information System and input the inspection records by electronic means, which are expected to be introduced progressively starting from the end of 2022.

(2) There are 31 475 valid food business licences as of January 2021. Breakdown by licence types is set out at Annex.

(3) Last year, the FEHD received 1 413 applications for transfer of food business licence, 1 396 of which had been approved.

[Transcript of remarks by CS at media session \(with video\)](#)

Following is the transcript of remarks by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, at a media session at the Legislative Council Complex after the Financial Secretary presented the Budget today (February 24):

First, let me say a few words about the important speech delivered on Monday by Mr Xia Baolong, Vice-Chairman of the National Committee of the Chinese People's Political Consultative Conference and Director of the Hong Kong and Macao Affairs Office of the State Council.

Director Xia clearly reiterated that "patriots governing Hong Kong" is a fundamental principle instrumental to the full and steadfast implementation of "one country, two systems". The Hong Kong SAR is an inalienable part of

the People's Republic of China. It is a local administrative region which enjoys a high degree of autonomy and comes directly under the Central People's Government. Under this constitutional order and political structure, it is fully justified and indeed a matter of course to require people vested with governing powers and responsibilities to be patriotic, to be fully committed to safeguarding national sovereignty, security, development interests as well as the long-term prosperity and stability of Hong Kong. This is a very common and fundamental principle that applies everywhere in the world.

As for Director Xia's comment on the need to improve the electoral system of the Hong Kong SAR, this is indeed pressing and necessary. The Hong Kong SAR Government totally respects the fact that it lies within the purview of the Central Authorities in improving the political structure of Hong Kong. We will fully co-operate with and support the Central Authorities in any follow-up action.

Now, let me turn to the Budget itself. The Financial Secretary has just delivered the 2021-22 Budget. The economy of Hong Kong has been severely hit and battered in the past year owing to COVID-19 pandemic, the social unrest, as well as external factors such as tensions between China and the United States. This Budget has been drawn up against this very difficult and challenging background.

This year's Budget provides much-needed relief to the public and businesses, prepares for the post-COVID-19 economic revival, while continuing to enhance Hong Kong's competitiveness and invest for the future.

In face of the economic downturn, the unemployment rate has reached a 17-year high. The Budget has proposed a series of short-term relief measures. In particular, the Budget proposes a Special 100% Loan Guarantee for Individuals Scheme to provide an extra financing option for individuals who are out of work. The Government will provide a guarantee for loans up to \$80,000.

The most noteworthy measure in this year's Budget is perhaps the issuance of electronic consumption vouchers worth \$5,000 to each eligible Hong Kong permanent resident and new arrival aged 18 or above. This is certainly a stimulant for local consumption and will help energise the local market.

This year's Budget has also placed emphasis on improving people's livelihood. For instance, it proposes to earmark \$1 billion to provide subsidies for eligible owners of more than 3 000 old buildings to carry out drainage repair or enhancement works and improve environmental hygiene. The Budget also stresses the importance of environmental protection and decarbonisation, developing a quality city for our citizens, strengthening our healthcare system, and promoting a caring and inclusive community.

Finally, the Government's community vaccination programme will commence this Friday. With wide public participation and support, the vaccination programme will bring us much closer to resuming normal life. I therefore

appeal to everyone in the community to get vaccinated to protect themselves and others.

I strongly support this year's Budget. I firmly believe that the Legislative Council will pass the Appropriation Bill as soon as practicable, paving the way for our economic recovery. Thank you.

(Please also refer to the Chinese portion of the transcript.)

LCQ22: Systems of judicial review and legal aid

Following is a question by the Hon Kenneth Lau and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (February 24):

Question:

It is learnt that the number of judicial review (JR) cases has increased sharply in recent years, and the applicants in quite a number of such cases have been granted legal aid by the Legal Aid Department. Some members of the public have queried that the present systems of JR and legal aid have been abused, leading to much wastage of judicial resources and public money. In this connection, will the Government inform this Council:

(1) of the statistics on JR related cases in each of the past five years as set out in Table 1;

Table 1

JR related cases	2016	2017	2018	2019	2020
(i) Leave applications					
(a) Number of cases filed					
(b) Number of cases in which the applicants were granted legal aid					
(c) Number of cases in which the applicants were granted leave					
(ii) Appeals against refusal to grant leave					
(a) Number of cases filed					
(b) Number of cases in which the applicants were granted legal aid					

(iii) Substantive proceedings of JR (a) Number of cases filed					
(b) Number of cases in which the applicants were granted legal aid					
(iv) Appeals against JR decisions (a) Number of cases filed					
(b) Number of cases in which the applicants were granted legal aid					

(2) of the statistics on the legal aid applications made by applicants of JR related cases in each of the past five years as set out in Table 2; and

Table 2

JR related cases	2016	2017	2018	2019	2020
(i) Legal aid applications made by applicants (a) Number of cases received					
(b) Number of cases approved					
(c) Public expenditure incurred for the approved cases					
(ii) Cases in which the applicants were granted legal aid and the Government was one of the parties involved in the proceedings (a) Number of cases filed					
(b) Public expenditure incurred					
(c) Number (percentage) of cases with decisions made in favour of the Government					
(d) Number (percentage) of cases with decisions made not in favour of the Government					

(3) of the new measures put in place by the authorities to prevent the systems of JR and legal aid from being abused; whether mechanisms will be put in place to regularly review the procedures for vetting and approving applications of the two systems, so as to prevent abuse from happening?

Reply:

President,

In consultation with the Judiciary and the Legal Aid Department (LAD), a reply to the various parts of the question is as follows:

(1) and (2) According to the Judiciary, the number of applications for leave to apply for judicial review (JR) filed in the Court of First Instance of the High Court from 2016 to 2019 and the number of leave applications granted are as follows:

Year of filing	2016	2017	2018	2019
(a) Number of applications for leave for JR	228	1 146	3 014	3 889
(b) Number of leave applications granted (as at November 10, 2020)#	30	56	97	25

#The figures represent the number of leave granted (as at November 10, 2020) amongst the applications for leave to apply for JR filed in the year. Such statistics are live data which may vary at different report generation dates and time.

Note: The number of cases filed in 2020 is being compiled. As a rough indication, more than 2 000 applications for leave for JR had been filed.

Apart from the above statistics on applications for leave for JR, the numbers of JR related cases filed from 2016 to 2019 are as follows:

Year of filing	(a) Number of appeals against refusal of leave
2016	13
2017	57
2018	410
2019	372
Year of filing	(b) Number of substantive JR cases filed
2016	31
2017	29
2018	40
2019	15
Year of filing	(c) Number of appeals against JR decisions
2016	21

2017	18
2018	20
2019	21

The numbers of legal aid applications for JR received and legal aid certificates granted (including the Government or a public organisation being one of the parties of the proceedings) by LAD between 2016 and 2020 are tabulated below:

Legal aid cases related to JR	2016	2017	2018	2019	2020
(a) Number of applications received	437	1 046	1 547	797	359
(b) Number of applications approved	27	29	60	81	82

Note: The numbers of legal aid certificates granted, as listed above, cover all circumstances mentioned in the question, including applications for leave for JR to Court of First Instance of the High Court, JR proceedings with leave granted, substantive proceedings of JR and appeals against refusal to grant leave and JR decisions. Legal aid certificates may not be granted in the same year as the applications were received.

The expenditures on legal aid cases involving JR in the past five financial years are tabulated below:

Financial year	Legal expenditure on JR cases# (€ million)
2016-17	36.3
2017-18	26.6
2018-19	29.5
2019-20	37.6
2020-21 (As at January 31)	29.1*

#The total legal expenditure on JR cases is the total legal aid expenditure on JR cases of the same year, including the expenditure on JR cases where the legal aid certificates were not granted in the same year.

*The amount may be subject to changes after year-end closing.

When processing applications for legal aid (including legal aid

applications involving JR), LAD will consider whether the applicants satisfy both the merits test and the means test. The stage of judicial proceedings of an application or the parties involved in the legal proceedings of a JR case (e.g. the Government or a public organisation) are not LAD's considerations when processing legal aid applications. Therefore, LAD does not keep the relevant detailed statistical breakdown.

(3) According to the Judiciary, Order 53 of the Rules of the High Court (Cap. 4A) provides that no application for JR shall be made unless the leave of the Court has been obtained. The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates. Based on the Judiciary's operational experience, this requirement of obtaining leave from court helps screen out applications for JR which are not reasonably arguable with a realistic prospect of success.

From 2016 to 2019, the total number of applications for leave to apply for JR increased substantially from 228 to 3 889, mainly from non-refoulement claim-related applications for leave to apply for JR. The number of such applications increased from 60 in 2016 to 3 727 in 2019. For the year of 2020 (as at September 30), 1 879 non-refoulement claim-related applications for leave to apply for JR were filed. As for other JR cases in general, the number has remained stable at an annual average of around 160 cases with no apparent trend of increase.

The Judiciary has all along been adopting a stringent approach in handling leave applications for JR. Between 2016 and 2019, among the 3 610 cases concluded as at November 10, 2020, leave was granted in only 208 cases (i.e. about 6 per cent), and among the 3 071 cases relating to non-refoulement claims, leave was granted in only 112 cases (about 4 per cent of the concluded cases).

In respect of legal aid, the policy objective is to ensure that no one with reasonable grounds for taking or defending a legal action is denied access to justice because of lack of means. LAD has an established mechanism to guard against abuse of legal aid. The Legal Aid Ordinance (Cap. 91) (LAO) provides that legal aid will only be granted to applicants who satisfy both the merits test and the means test. These criteria are also applicable to the legal aid applications for JR. As such, all legal aid applications (including the applications for JR) are processed by Legal Aid Counsel employed by LAD. In assessing the merits of an application, LAD will carefully look into and consider the facts of the case, evidence available and the legal principles applicable to the case to determine whether there are reasonable grounds for legal aid to be granted. Even if an applicant is successfully granted legal aid, LAD will still monitor his/her case from time to time to ensure that there are sufficient grounds for the aided person to continue to receive legal aid. Otherwise, LAD will discharge the legal aid certificate. In fact, JR cases only account for a small proportion of civil legal aid cases and of all legal aid cases. In 2019 and 2020, legal aid applications for JR which were granted legal aid certificates only accounted for 1.6 per cent of all civil legal aid certificates and 1 per cent of all legal aid certificates

respectively.

Besides, the Legal Aid Regulations (Cap. 91A) (the Regulations) also provides the penalties against abuse of legal aid services. Section 9 of the Regulations requires that LAD may revoke a legal aid certificate if the applicant or aided person knowingly made a false statement concerning any information furnished by him/her, and recover from the person all costs incurred on his/her behalf. LAD will also refer the case to the Police for follow-up actions. The aided person will be liable on conviction to a fine and to imprisonment for 6 months. Furthermore, LAD has put in place a mechanism for making "representations". Any person can report to LAD if he/she believes that an applicant or aided person withheld information or furnished false information for LAD's investigation.

Furthermore, according to section 11 of the Regulations, where a person has applied for legal aid and been refused on two or more occasions where the applications relate to substantially the same cause or matter; or in any other case, on four or more occasions, and it appears to the Director of Legal Aid that his/her conduct has amounted to an abuse of the facilities provided by the LAO, the Director may order that no consideration shall be given to any future application by that person for a maximum of three years.

[LCQ17: Irregularities concerning law firms](#)

Following is a question by Dr Hon Chiang Lai-wan and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (February 24):

Question:

Recently, the Law Society of Hong Kong (Law Society) intervened in the operation of a law firm (the firm) because the Law Society suspected after investigation that a former staff member of the firm had dishonestly misappropriated the money of the clients of the firm and was satisfied that the firm had committed serious breaches of the provisions of the Solicitors' Accounts Rules (Cap. 159F). The firm forthwith ceased practice, and all the money of the firm has been held by the Council of the Law Society (Council) on trust. It has been reported that as the firm was mainly engaged in business relating to the sale and purchase (S&P) of second-hand property units, quite a number of property buyers had deposited money, amounting to nearly \$130 million, under the client accounts of the firm. Some affected clients could not complete property transactions by the deadlines specified in the S&P agreements as they could not get back in time their money deposited with the firm, hence suffering huge losses. Similar incidents also

occurred in 2016. In this connection, will the Government inform this Council:

(1) whether it will amend Cap. 159F to prevent the occurrence of the following situation: upon the intervention of the Law Society in the operation of a law firm which has breached regulations, the clients' money deposited in the client accounts of the law firm concerned has to be held by the Council on trust; if so, of the details; if not, the reasons for that;

(2) whether it will consider in future (i) requiring that the transaction money of both the buyer and the seller of a property shall no longer be handed to the law firms for depositing into the relevant client accounts, but instead be put in the custody of an independent third party, or (ii) establishing a compensation fund to compensate those clients of a law firm who have suffered losses caused by the winding up of the law firm or the Law Society's intervention in the firm's operation; if so, of the details; if not, the reasons for that;

(3) whether, in the event that a staff member of a law firm has committed criminal offences or negligence resulting in losses on the part of the firm's clients, the relevant solicitors or partners of the law firm concerned will be penalised under the current mechanism; if so, of the details; if not, the reasons for that; and

(4) of (i) the number of law firms whose operation was intervened by the Law Society, (ii) the number of affected clients and the amount of money involved, and (iii) the respective longest, shortest and average time taken for returning the clients' money concerned, in each of the past five years, and set out the information by reason for the intervention?

Reply:

President,

As pointed out in my written response to a relevant question from the Legislative Council on January 20 this year, the implementation of a self-regulatory regime for Hong Kong's legal profession is to ensure the professionalism and independence of Hong Kong legal practitioners. The profession itself is also best placed to respond to the ever-changing landscape of international and local legal practices. This regime is crucial to upholding the rule of law and at the same time maintaining Hong Kong's position as an international legal hub for deal-making and the provision of legal and dispute resolution services.

The Legal Practitioners Ordinance (Cap. 159) (the Ordinance) and its subsidiary legislation provide that the Law Society of Hong Kong (the Law Society) is the only organisation authorised by law to regulate the professional branch of solicitors. The Law Society must, in compliance with the relevant laws, exercise its powers and discharge its duties independently in relation to the regulation of solicitors.

Amongst others, section 26A of the Ordinance specifies the circumstances

under which the Council of the Law Society (the Council) may pass a resolution to exercise its statutory power to intervene into a law firm's practice (intervened firm) , including where there is reason to suspect dishonesty on the part of a solicitor or an employee of a solicitor, and exercise the powers set out in Schedule 2 to the Ordinance, including those relating to the handling of money, documents and mail of the intervened firm and appointing an intervention agent to assist in the intervention, for the protection of the interests of the clients of that firm and the public.

In respect of the case mentioned in the question, the Law Society intervened into the practice of the relevant law firm on December 24, 2020. Since then, the Department of Justice (DoJ) has been in contact with the Law Society so as to be appraised of developments.

In relation to the questions raised by Dr Hon Chiang Lai-wan, the DoJ, having made enquires with the Law Society, replies as follows:

(1) Schedule 2 to the Ordinance provides the Council with various statutory powers, including the power to handle the money, documents and mail of the intervened firm, and to appoint an intervention agent to assist in the intervention, for the protection of the interests of the clients of the relevant firm and the public.

Amongst others, section 2 under Schedule 2 of the Ordinance provides that if the Council passes a resolution to the effect that all sums of money of the intervened firm (including all sums of money deposited by clients of the intervened firm in any client accounts of that firm) shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Council on trust for the persons beneficially entitled to them.

The purpose of exercising this power is to preserve the money of the intervened firm and to prevent the money concerned from being misappropriated, so as to protect the interests of the clients and the public. The Law Society indicates that generally, the major concerns of the Council in most intervention cases are the risk of further misappropriation of client funds, and the immediate need to take action to preserve the money that is under the control of the intervened firm. The power of intervention granted to the Law Society under the Ordinance, including the power to handle the money of the intervened firm, is designed to deal with such kind of urgent situation for the protection of the interests of the clients of the intervened firm as well as the public.

The mechanism which provides for the Law Society to intervene into the practice of a law firm, as stipulated under the Ordinance, is an important regulatory tool. The DoJ is willing to be in liaison with the industry and other stakeholders over the possibilities of enhancing the relevant regulations under the Ordinance on the basis that both the interests of the clients of the intervened firm and of the public are protected.

(2) We understand that the current payment method in property transactions are generally matters to be agreed between the vendors and purchasers.

In relation to views on further strengthening the protection of clients of solicitors' firms and the public interests, the DoJ is ready to communicate with the industry.

(3) The Solicitors Disciplinary Tribunal Panel (Panel) set up pursuant to section 9 of the Ordinance is responsible for inquiring or investigating into the conduct of a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer. The tribunal convenor of the Panel (Tribunal Convenor) and the members of the Panel are appointed by the Chief Justice of the Court of Final Appeal.

Pursuant to section 9A(1) of the Ordinance, where the Council considers that the conduct of a person who is, or was at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer should be inquired into or investigated as a result of a complaint being made to it or otherwise, the Council shall submit the matter to the Tribunal Convenor.

Upon receipt of the matter submitted by the Council, the Tribunal Convenor shall, pursuant to section 9B(1) of the Ordinance, appoint from the Panel two solicitors and one lay person to constitute a Solicitors Disciplinary Tribunal (Tribunal) to inquire into and investigate the matter.

Section 10(2) of the Ordinance stipulates the sanctions that the Tribunal could impose, including striking off the roll of solicitors the name of a solicitor and suspending a solicitor from practice for a specified period, etc. Section 10(4) of the Ordinance provides that an order made under section 10(2) may also be made in respect of a person who was, at the relevant time, an employee of a solicitor or foreign lawyer.

In addition, according to the Practising Certificate (Special Conditions) Rules (Cap. 159Y) (the Rules), under specified circumstances, the Law Society is empowered to impose additional conditions on a practising certificate already issued to a solicitor. For example, section 7(2)(c) of the Rules provides that, where a solicitor has been charged with, or convicted of –

- (i) an offence involving dishonesty or deception; or
- (ii) an offence which in the opinion of the Council has compromised or impaired or is likely to compromise or impair the reputation of the profession,

the Law Society could impose one or more conditions specified in Schedule 1 to the Rules on that solicitor's practising certificate; for example, that solicitor may only practise under the supervision of a solicitor holding an unconditional practising certificate, or that solicitor may only practise in an employment that has been approved by the Council, or that solicitor shall not sign cheques on a client account, etc.

(4) The DoJ does not have the information requested in the question. On our enquiry, the Law Society agrees to disclose the following information.

From 2016 to 2020, there were 15 interventions. Among them,

- (i) two were due to the death or incapacity of the sole proprietor;
- (ii) three were due to suspected dishonesty of an employee or a partner (two of these cases also involved breaches of the Solicitors' Accounts Rules);
- (iii) nine were due to breaches of the Solicitors' Accounts Rules; and
- (iv) one was due to being in practice without a practising certificate.

In connection with the above interventions, the Law Society received a total of 941 claims (excluding claims that were subsequently withdrawn). The total amount of claims was about HK\$120 million. According to the statistics maintained by the Law Society, it would take an average of approximately one and a half years (counting from the date of the intervention) to have the fund released with the Court's approval.