

Transcript of remarks by Secretary for Justice at media session

Following is the transcript of remarks by the Secretary for Justice, Ms Teresa Cheng, SC, at a media session after attending the Legislative Council meeting today (May 29):

Reporter: Secretary, you have already stated that the current bill has already provided sufficient safeguards for an ad hoc. Is it misleading for the Government to say the current bill is adding extra safeguards, because there was basically a transition from the current bill?

Another question is on Mr Lau Luen-hung's case, as he has withdrawn from the judicial review application. Without commenting on a specific case, do you think the current legislation already provides a safeguard on extradition in absentia? Any case which is convicted in absentia on the accused will have to be retried before he can be extradited to Hong Kong?

Secretary for Justice: Right, I think this question, I believe, is from the South China Morning Post. It is very interesting. First, I will deal with the second question. This is the second question relating to the withdrawal of a particular judicial review. It is obviously not apt for me to comment on that. I think whatever you have said, I am sorry, I cannot comment.

The second question is also very interesting from the South China Morning Post, asking whether by stating certain things that is misleading. Now, it is very difficult to comment on whether something is misleading or not misleading. But it is very important for the media to report the facts completely, so that the public has a full perception of what the provisions in the law are, and therefore to understand the statements or positions that are made and taken by various people. Thank you very much.

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

CHP investigates influenza B outbreak at primary school in Wong Tai Sin

The Centre for Health Protection (CHP) of the Department of Health is today (May 29) investigating an influenza B outbreak at a primary school in Wong Tai Sin, and reminded members of the public who have not yet received seasonal influenza vaccination in the 2018-19 season that they can still receive it for personal protection against seasonal influenza.

The outbreak involves 16 boys and seven girls aged 6 to 8 who developed fever, cough and sore throat since May 15. Among them, 18 sought medical attention and none required hospitalisation. All are in a stable condition. The respiratory specimens of three children tested positive for influenza B upon laboratory testing.

Officers of the CHP have conducted a site visit and advised the school to adopt infection control measures against respiratory tract infections. The school has been placed under medical surveillance.

A spokesman for the CHP said, "To prevent outbreaks of influenza and other respiratory infections, it is of prime importance that students with fever, regardless of the presence of respiratory symptoms, should not be allowed to attend school. They should seek medical advice and avoid school till 48 hours after the fever has subsided. Schools should also measure and record students' body temperature properly."

Schools are reminded to follow the [Guidelines on Prevention of Communicable Diseases](#) on preventive and control measures as well as management of outbreaks, which should be reported to the CHP for prompt follow-up.

"Although the winter influenza season has ended, members of the public aged 6 months or above (except those with known contraindications) who have not yet received a seasonal influenza vaccination in the 2018-19 season can still receive it for personal protection against seasonal influenza," the spokesman said.

"Meanwhile, the public should continue to adopt strict personal, hand and environmental hygiene practices against respiratory illnesses and other infectious diseases," the spokesman added.

The public may visit the CHP's [influenza page](#) and weekly [Flu Express](#) for more information.

LCQ19: Sickness allowance

Following is a question by the Hon Luk Chung-hung and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (May 29):

Question:

Under the Employment Ordinance (Cap. 57), an employee employed under a continuous contract who has taken a sick leave for not less than four consecutive days is entitled to a sickness allowance, provided that other statutory requirements are met. Some employees have relayed to me that as no

sickness allowance will be payable to them if they take a sick leave for less than four consecutive days, they strain themselves to go to work even when they are sick. In addition, as the early symptoms of certain infectious diseases are mild, the risk of such infectious diseases spreading will increase if employees who have contracted those diseases still go to work as usual. In this connection, will the Government inform this Council:

(1) whether it encouraged private enterprises and institutions in the past three years to (i) handle their employees' requests for taking sick leave in a sympathetic manner during the surges of measles and influenza, and (ii) grant a sickness allowance to their employees who have taken a sick leave for less than four consecutive days; if so, of the details; if not, whether it will do so in the future;

(2) whether the Government, being the largest employer in Hong Kong, will (i) take the lead in granting a sickness allowance to all of its contract staff members who have taken a sick leave for less than four consecutive days and have met other statutory requirements, and (ii) require contractors of outsourced service contracts to follow suit; if so, of the details; if not, the reasons for that; and

(3) whether it will, in the long run, introduce legislative amendments to (i) stipulate that an employee who takes a sick leave for less than four consecutive days is also entitled to a sickness allowance, and (ii) raise the daily rate of the sickness allowance from 80 per cent of the daily average wage earned by the employee during the 12-month period before the sick leave to 100 per cent of that amount; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Civil Service Bureau (CSB) and the Financial Services and the Treasury Bureau (FSTB), I provide a consolidated reply to the Member's question as follows:

(1) The Labour Department (LD) has all along been promoting to employers and employees their obligations, rights and benefits under the Employment Ordinance (EO) (Cap. 57) through a wide range of publicity activities. LD also actively promulgates good human resource management practices and encourages employers to provide to their employees employment benefits which are more favourable than those required under the law in order to help establish harmonious labour relations. Relevant publicity activities include distributing leaflets and promotional materials, displaying posters, publishing feature articles through newspapers and online media, placing advertisements at periodic journals of major employers' associations and trade union federations, etc. As far as LD is aware, many enterprises and organisations provide sickness allowances to their employees who have taken sick leave of less than four consecutive days, having regard to their own human resource management practices and the situation of individual staff.

(2) For part (i) in the question, as advised by CSB, under the Non-Civil Service Contract (NCSC) Staff Scheme, bureaux/departments (B/Ds) may determine the entitlements of NCSC staff to sickness days and sickness allowance, provided that they are no less favourable than those provided in E0, or else the arrangement should be made according to E0. In the past three years, about 90 per cent of full-time (Note) NCSC staff enjoyed more favourable sick leave entitlement than those provided in E0. They were allowed to take paid sick leave for less than four days on top of the sick leave entitlement provided in E0. Given the nature of the NCSC Staff Scheme, it is the Government's policy to allow B/Ds due flexibility in the employment of NCSC staff. B/Ds may, having regard to their operational and service needs, as well as the specific needs of individual job's nature, determine the employment and related matters of staff, including whether paid sick leave for less than four consecutive days is provided. B/Ds may consider each case based on its own merits. Across-the-board arrangement is not appropriate. Notwithstanding this, CSB has reminded B/Ds from time to time to enhance the terms and conditions of NCSC staff on a discretionary basis if situation warrants, and to conduct periodic reviews and pay adjustment to ensure that the employment package remains competitive with the prevailing employment market situation. As regards part (ii) in the question, according to FSTB, the employees of Government Service Contractors do not have employment relationship with the Government, and they are entitled to the protection under E0 (including sickness allowance) like other employees.

(3) Under E0, an employee is entitled to sickness allowance equivalent to four-fifths of his/her average daily wages if he/she can produce appropriate medical certificate for sick leave of not less than four consecutive days and fulfils other statutory requirements (e.g. sufficient number of paid sickness days being accumulated). E0 only sets out the minimum standards of rights and benefits for employees under the law. The Government always encourages individual employers, having regard to their own business operations and affordability, to offer employment benefits (including sickness allowance) above the statutory standards to their employees.

Since the introduction of sickness allowance under E0, the relevant provisions have been reviewed from time to time. Apart from gradually raising the rate of sickness allowance from one half to the current level of four-fifths of an employee's average daily wages, the maximum number of paid sickness days to be accumulated has been progressively increased from the initial 24 days to the present 120 days. In addition, the medical professionals recognised under E0 for certifying an employee's incapability to work in consequence of sickness or injury have been extended from registered medical practitioners to cover also registered dentists and registered Chinese medicine practitioners, thus affording employees more options on treatment.

An employee's absence from work owing to illness is not necessarily work-related. In apportioning the financial loss arising from an employee's illness, there is a need to take into account the interests of both employers and employees. Given that sickness allowance is payable for sick leave of four consecutive days or more, the present provisions have served to provide

a certain level of protection to eligible employees if they need to take a longer period of sick leave. The Government has no plan to make amendments to the concerned provisions at this stage.

Note: "Full-time" employment means employment under a "continuous contract" as defined by EO. According to the Ordinance, an employee is regarded as being employed under a continuous contract if he/ she works continuously for the same employer for four weeks or more, with at least 18 hours in each week.

Strategic Public Policy Research Funding Scheme 2019-20 opens for application

The Policy Innovation and Co-ordination Office (PICO) today (May 29) announced that the Strategic Public Policy Research (SPPR) Funding Scheme 2019-20 is now open for application.

The SPPR Funding Scheme, together with the Public Policy Research (PPR) Funding Scheme, both managed by the PICO, are unique in Hong Kong in that they are the only government-subsidised funding schemes dedicated to fostering and supporting public policy research in Hong Kong. The total annual provision for the two schemes is \$30 million. Both schemes aim to promote public policy research and evidence-based research to facilitate public policy discussion. Specifically, the SPPR Funding Scheme aims to support longer-term public policy research on strategic themes, build up research capacity, and facilitate collaboration among institutions/think tanks on the strategic themes. Applications for the SPPR Funding Scheme are invited once a year while the PPR Funding Scheme are accepted throughout the year.

Twelve strategic themes have been identified for the SPPR Funding Scheme 2019-20, namely (a) Development of the Guangdong-Hong Kong-Macao Greater Bay Area; (b) Belt and Road Initiative; (c) Big Data/Smart City; (d) Innovation and Technology/Artificial Intelligence/Re-Industrialisation; (e) Developing Green Finance in Hong Kong; (f) City Branding Strategy for Hong Kong; (g) Consolidating Hong Kong's Position as an International Logistics Hub; (h) Transitional Housing; (i) Children and Youth Development; (j) Ageing Population; (k) Healthcare System Innovation; and (l) Manpower Supply and Development.

A sum ranging from \$3 million to \$5 million may be granted to each successful SPPR project. The duration of research projects will normally last from three to five years. Projects with a shorter duration will be considered if strong support and justifications are provided.

Applications for the SPPR Funding Scheme 2019-20 should be submitted on or before August 2.

Assessments will be conducted by an Assessment Panel set up by PICO which is chaired by and comprises experienced academics. The Panel will determine the assessment criteria and details of the two funding schemes. Applications will be assessed by the Panel as well as local and non-local reviewers, who are academics and experts outside the Panel. To ensure policy relevance of the research proposals, suggestions and views of relevant government bureaux/departments will also be sought for reference by the Assessment Panel. A declaration of interests system is in place to ensure that the assessments are fair and impartial.

Research quality and the strategic relevance to the public policy development of Hong Kong are the primary considerations in evaluating research proposals under the SPPR Funding Scheme. In considering a research proposal, the Assessment Panel will also take into account factors such as deliverables of the research, the research team's capability, the feasibility and practicality of the proposal, the implementation schedule, and the proposed budget. Institutional support towards capacity building in public policy research (e.g. infrastructure support or matching funds) and any external funding sources and support will also be taken into consideration.

For details of the SPPR Funding Scheme, including eligibility criteria, the strategic themes, composition of the Assessment Panel, the application method and other related information, please visit PICO's website (www.pico.gov.hk/en/PRFS).

[Speech by SJ at ASIFMA Compliance and Legal Conference \(English only\)](#)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Compliance and Legal Conference organised by the Asia Securities Industry and Financial Markets Association (ASIFMA) today (May 29):

Mr Austen (Mr Mark Austen, Chief Executive Officer of the ASIFMA), Mr Alder (Mr Ashley Alder, Chief Executive Officer of Securities and Futures Commission), distinguished guests, ladies and gentlemen,

It is my great pleasure to join you this morning at the Inaugural Compliance and Legal Conference organised by the ASIFMA. I am most honoured to be invited to address such a distinguished audience. First of all, on behalf of the Government of the Hong Kong Special Administrative Region (HKSAR), I would like to extend our warmest welcome to all participants of this Conference.

Today's event provides a very valuable platform for focused discussion on issues concerning the legal and compliance industry in face of, as the caption underneath the ASIFMA's logo reads, "Growing Asia's Markets". Among other Asian countries, China is in no doubt taking the lead in growth in terms of both the market size and market share. China is now the second largest economy in the world, with an annual GDP of over US\$12 trillion. Liberalisation plays a crucial role in facilitating China's development into a sustainable economy. In the next few minutes, I would like to talk about how Hong Kong's friendly business environment, coupled with a sound legal and regulatory regime, enable this city to operate as a strategic centre to facilitate international trade and investment, and as the pivotal gateway to the "Growing China's Market". I will first try to explain Hong Kong's unique role in the further opening up of the Mainland markets.

Hong Kong's Role in Opening-up of the Mainland Market

Hong Kong is widely acclaimed as a major international financial centre, and plays a pivotal role in facilitating investment and efficient operation of the Asian and global financial markets.

The Heritage Foundation's 2019 Index of Economic Freedom report ranks Hong Kong as the world's freest economy for the 25th consecutive year. As regards our financial competitiveness, Hong Kong continues to be ranked first in Asia and third globally, just behind London and New York, in the latest Global Financial Centres Index. The Stock Exchange of Hong Kong (SEHK) has been ranked first for six years in terms of IPO funds raised during the past decade.

With the business-friendly environment mentioned above, a robust common law legal system familiar to the international business community, and a strong nexus with the Mainland China under the "one country, two systems" principle, Hong Kong possesses the strengths as a modern but also modest international city and a special administrative region of China. This dual role and the unique convergence of the advantages of both worlds allow Hong Kong to be China's gateway to the world's financial markets and investors.

Hong Kong's role as a gateway and platform for inbound and outbound investment with Mainland China is exemplified by various mutual access schemes. The Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect were launched in November 2014 and December 2016 respectively. The schemes allow eligible Mainland investors to trade eligible stocks listed on the SEHK through the the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE). The schemes also allow Hong Kong and overseas investors to trade eligible stocks listed on the SSE and the SZSE through the SEHK.

This is a mutually beneficial development. The two schemes facilitate the further opening up of the Mainland's capital markets in a risk-controlled manner. Furthermore, they enable international investors to invest in the Mainland's markets through Hong Kong's markets, thereby reinforcing Hong Kong's position as an international financial centre.

With the increase in the daily quotas of Stock Connect from May 1, 2018,

Hong Kong's capital markets will play a more significant role and make greater contributions in the two-way opening-up of the Mainland's capital markets to the rest of the world.

Hong Kong's Legal Framework on Protecting and Facilitating Investment

The initiatives of the HKSAR Government for enhancing our role in regional and international capital markets are underpinned by Hong Kong's modern and robust regulatory framework, which operates with an independent judiciary and strong rule of law in Hong Kong. On judicial independence, the World Economic Forum, for example, has ranked Hong Kong as the first in Asia for six consecutive years. According to the Worldwide Governance Indicators Project of the World Bank, Hong Kong's percentile ranking in rule of law has improved from 69.9 per cent in 1996 to 93.8 per cent in 2017 over 21 years. All these internationally recognised track records have been fundamental to the confidence of the Mainland and overseas companies in pursuing their business missions in Hong Kong.

Investment is also facilitated by a simple taxation regime, as provided for under the laws of Hong Kong. For example, with effect from April 1, 2019, all privately offered onshore and offshore funds operating in Hong Kong can enjoy profits tax exemption for their transactions in specified assets subject to meeting certain conditions.

Whilst I will leave it to Mr Alder to speak more on the legislative framework governing the operation of the capital market, i.e. the Securities and Futures Ordinance (Cap 571), I should also refer to the statutory protection to investors under the criminal law, which has an important place in the legal framework to minimise crime and misconduct in the markets while ensuring efficiency and fairness of the markets.

The Crimes Ordinance (Cap 200) and the Theft Ordinance (Cap 210) are important tools in prosecuting crimes, such as fraud and obtaining property by deception, in the context of the financial markets. Complementary to the above statutes, the well-established common law system of Hong Kong is also effective in deterring market players from committing financial crimes including the common law offence of conspiracy to defraud.

Maintaining Hong Kong's status as one of the most corruption-free places in the world is no less important than combating financial crimes. In the Transparency International's Corruption Perceptions Index 2018, Hong Kong is ranked the 14th least corrupt place among 180 countries/territories.

To this end, Hong Kong has an extensive statutory anti-corruption framework, with the Prevention of Bribery Ordinance (Cap 201) as our flagship anti-corruption legislation. It creates various bribery and corruption offences against solicitation or acceptance of advantages by public servants as inducement or reward relating to performance of their duties, or by agents in the private sector in conducting the affairs or business of their employers. The offerors of such advantages also commit an offence.

Not only do we spend great efforts in fighting financial crime and

corruption in Hong Kong locally, we are also an active and responsible player in the context of international co-operation. The existence of a suitable legal framework for surrender of fugitive offenders and mutual legal assistance is a hallmark for the rule of law. Such a framework should be workable, provide the necessary safeguards for the fugitive offenders, and importantly be applicable to all the jurisdictions in the world.

Hong Kong's surrender of fugitive offenders and mutual legal assistance regimes contain prerequisites of co-operation which are in line with international standards. Grounds of refusal for co-operation include non-compliance with the dual criminality principle, double jeopardy, conviction in absentia, political offences and the death penalty. These grounds of refusal are also contained in the United Nations Model Treaties on extradition and Mutual Legal Assistance, and they form the basis of Hong Kong's legal framework. Amendments to further enhance the legal framework have been put in place and are under discussion at the moment.

Dispute Resolution in Financial Sector

In the context of the financial services industry, dispute resolution has been gaining popularity as an alternative to litigation due to a number of advantages, including the parties' ability to appoint arbitrators with the experience and knowledge of a particular industry or product, the possibility of maintaining confidentiality of commercially sensitive information, and flexibility in terms of procedure and enforceability of the awards.

This trend can be exemplified by the 2018 Arbitration Guide of the International Swaps and Derivatives Association (ISDA). It contains various sets of model clauses which modify the ISDA Master Agreement, providing users with options for arbitration to be seated in different cities, and be subject to different institutional rules and laws, including the rules of the Hong Kong International Arbitration Centre (HKIAC).

The HKIAC, as one of the major arbitral bodies in Hong Kong, is well equipped with expertise and skills in resolving financial disputes. In 2008, as a result of the Lehman Brothers incident, the Hong Kong Monetary Authority appointed the HKIAC to administer the Lehman-Brothers-related Investment Products Dispute Resolution Mediation and Arbitration Scheme to resolve mini-bonds claims between banks and investors. This scheme proved to have saved the parties' and the court's time and resources as it would otherwise have taken a number of years for the cases to proceed via litigation for a determination. Indeed that initiative led to the setting up of the Financial Dispute Resolution Centre, which I will also mention in a moment.

In addition to arbitration, mediation has also become a more prevalent tool in resolving dispute by virtue of its merit of maintaining harmonious business relationship after settlement. This is especially relevant in Asia, where there is a common culture of being less litigious and more conciliatory.

In this regard, Hong Kong is promoting the wider use of mediation in resolving commercial as well as investment disputes. The Mainland and Hong

Kong Closer Economic Partnership Arrangement (CEPA) was concluded in 2003 to strengthen trade and investment between the Mainland and Hong Kong. An Investment Agreement was signed under CEPA in 2017 to provide for a Mediation Mechanism for Investment Disputes between investors and institutions in Hong Kong and the Mainland.

Resolution of Financial Disputes in Hong Kong

In response to potential financial disputes similar to those which stemmed from the Lehman-Brothers incident, the Financial Dispute Resolution Centre (FDRC) was established in 2011. It administers a Financial Dispute Resolution Scheme (FDRS) which provides an independent and affordable avenue for eligible claimants to resolve their monetary disputes with financial institutions by way of the "mediation first, arbitration next" principle.

With a very high success rate in settlements, the FDRC has proven to be an important dispute resolver in the financial industry.

A total of 90 per cent of the cases received and handled in 2017 were successfully settled in the mediation process. From its inception in mid-2012 to 2017, about 90 per cent of the mediation service users have rated FDRC's services as "satisfactory" or above.

Taking into account its operational experience, views from various stakeholders, and the prevailing international practices, the FDRC implemented an enhanced FDRS from January 2018 with a greater scope of coverage, higher accessibility and more flexibility to the benefits of its users.

The service enhancements include increasing the maximum claimable amount from HK\$500,000 to HK\$1 million, extending the limitation period from 12 months to 24 months, and enabling the parties involved to mutually agree to refer claims that are beyond those limits to the particular scheme.

In addition, from July 1, 2018 onwards, small enterprises, which include limited companies and partnerships within the relevant financial thresholds, were included as eligible claimants.

Conclusion

Ladies and gentlemen, the HKSAR Government is committed to capitalising on and further strengthening our competitive edge as a global financial centre and contributing actively to our country's development by serving as the gateway connecting the Mainland and the rest of the world. This Conference over the next two days raises important topics and issues for discussion amongst industry participants in the financial sector. In closing, may I express my gratitude to the ASIFMA for choosing Hong Kong to organise this inaugural conference on compliance and legal matters, and wish this conference every success. For those coming from overseas, I hope you will enjoy your stay in Hong Kong. Thank you very much.