

## LCQ20: Acts relating to clandestine photography

Following is a question by the Dr Hon Elizabeth Quat and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 8):

Question:

Last month, the Court of Final Appeal handed down a judgment on an appeal case, ruling that as the acts of the respondents clandestinely taking photographs of interview questions with their own mobile phones and divulging them to other people had not involved access to another person's computer, the respondents had not committed the offence under section 161(1)(c) of the Crimes Ordinance (Cap. 200) (i.e. the offence of obtaining access to a computer with a view to dishonest gain for himself or another person). In this connection, will the Government inform this Council:

(1) as the Government indicated, subsequent to the handing down of the aforesaid judgment, that the Police were discussing with the Department of Justice ways to deal with nine other cases of a similar nature, of the details of those cases and the approach for dealing with them;

(2) as there are comments that following the handing down of the aforesaid judgment, it will be difficult for the Police to invoke any legislation to institute prosecutions against those persons who take photographs clandestinely with their own mobile phones in a private place, of the Government's measures to curb such acts before any legislation is enacted to plug the loophole;

(3) as the Review of Sexual Offences Subcommittee of the Law Reform Commission proposed the creation of a new offence of voyeurism and conducted public consultation on the proposal in May last year, whether the Government will immediately commence the relevant legislative procedure; if so, of the details and the timetable; if not, the reasons for that;

(4) whether it will immediately conduct a study on enacting legislation against acts of clandestine photo-taking of confidential documents or information; if so, of the details and the timetable; if not, the reasons for that; and

(5) given that at present, the non-compliance of a data user with the Data Protection Principles stipulated in the Personal Data (Privacy) Ordinance (Cap. 486) does not directly constitute a criminal offence, and the data user commits a criminal offence only if he or she contravenes an enforcement notice served on him or her by the Privacy Commissioner for Personal Data in connection with such non-compliance, and that the offence only carries a maximum fine of \$50,000 and an imprisonment of two years, whether the

Government will amend Cap. 486 to enhance the deterrent effects against acts of privacy intrusion such as clandestine photo-taking; if so, of the details; if not, the reasons for that?

Reply:

President,

Section 161 of the Crimes Ordinance (CO) (Cap. 200) on "access to computer with criminal or dishonest intent" stipulates that any person who obtains access to a computer:

- (a) with intent to commit an offence;
- (b) with a dishonest intent to deceive;
- (c) with a view to dishonest gain for himself or another; or
- (d) with a dishonest intent to cause loss to another,

whether on the same occasion as he obtains such access or on any future occasion, commits an offence.

The above provision aims at combating acts of "access to computer with criminal or dishonest intent", such as technology crimes like illegal access to a computer system. The maximum penalty is five-year imprisonment on conviction upon indictment.

On April 4, 2019, the Court of Final Appeal (CFA) held in *Secretary for Justice v CHENG Ka Yee & 3 Others* [2019] HKCFA 9 that the text, context, and purpose of section 161(1)(c) of CO pointed towards construing the provision so that it does not extend to the use of the offender's own computer. In other words, on its proper construction, section 161(1)(c) of CO does not apply to the use by a person of the person's own computer, not involving access to another's computer.

The Government respects CFA's ruling. The judgment helps clarify the relevant statutory provisions and legal viewpoints. Having consulted the Constitutional and Mainland Affairs Bureau, the Department of Justice (DoJ) and the Secretariat of the Law Reform Commission (LRC), our reply to the various parts of the question is as follows:

(1) & (2) As at April 30 this year, the Police had eight cases related to the offence of "access to computer with criminal or dishonest intent" under section 161 of CO pending handling. As regards the other case, the charge has already been amended to the offence under the Hospital Authority Bylaws concerning the taking photograph of a patient in a hospital without consent, and legal proceedings are still on-going. The Police will continue to maintain close liaison with DoJ to ensure that the relevant cases are handled appropriately, such as examining whether to proceed with prosecution with the charge of "access to computer with criminal or dishonest intent" in light of the circumstances of individual cases, or considering the feasibility of laying alternative charge(s).

Given that the facts of every case are different, there is no hard-and-fast rule on how to handle the relevant cases. In considering each case, DoJ will make relevant prosecutorial decisions based on the actual facts, evidence, applicable law and the Prosecution Code. Most legislation targeting the real world (such as theft, deception, etc.) also applies to crimes committed through the Internet or by means of technology. Focusing on obtaining access to a computer with criminal or dishonest intent, section 161 of CO remains effective against unlawful acts such as illegal computer intrusion and obtaining access to another's computer for committing other offence(s).

We understand the public's concern about acts such as clandestine upskirt-photography. Depending on the actual circumstances and evidence of the case, the acts may constitute the offence of "loitering" under section 160 of CO (Cap. 200) with a maximum penalty of imprisonment for 2 years; "disorder in public places" under section 17B of the Public Order Ordinance (Cap. 245) with a maximum penalty of a fine at level 2 and imprisonment for 12 months; or "outraging public decency" under the common law with a maximum penalty of imprisonment for seven years.

If the photo-taking activities involve "personal data" as defined in the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486), and the collection or handling of such personal data contravenes the data protection principles as set out in Schedule 1 to PDPO, the Privacy Commissioner for Personal Data (PCPD) may issue an enforcement notice to relevant persons. A person who contravenes an enforcement notice will, on first conviction, be liable to a maximum penalty of a fine at level 5 and imprisonment for two years plus a daily fine.

(3) & (4) With regard to the impacts brought about by CFA's judgment handed down on April 4, 2019 in respect of section 161 of CO, the Security Bureau (SB) is looking into the judgment with relevant departments and proactively examining the legislative amendment on the crime concerned, with a view to introducing the relevant legislative proposal as soon as possible.

In that regard, in respect of the offence of voyeurism, LRC released a report on "Voyeurism and Non-consensual Upskirt-photography" on April 30 recommending the introduction of a new and specific offence of voyeurism to deal with acts of non-consensual observation or visual recording of another person for a sexual purpose; and a new and specific offence in respect of non-consensual upskirt-photography. SB welcomes LRC's recommendations and will carefully study and follow up the report. We suggest discussing with the Panel in July, to be followed by a consultation, with a view to introducing a bill for the Legislative Council's scrutiny as soon as possible.

On the other hand, in light of the rapid development associated with information technology, computer and the Internet, coupled with the potential for them to be exploited for carrying out criminal activities, an LRC sub-committee commenced its study on the topic of cybercrime in January this year. SB will continue to closely monitor the progress of the study.

(5) Given the rapid development in information technology and online communications, technological advancement has brought new challenges to the protection of personal data privacy. The Government is highly concerned about how to improve the regulation on personal data and maintains an open mind on amending and improving the PDPO. Currently, the Constitutional and Mainland Affairs Bureau, jointly with the Office of PCPD, has commenced reviewing the relevant regulations and penalties of PDPO, including studying issues such as the establishment of a mandatory data breach notification mechanism, retention period of personal data and regulation of data processors. Having regard to the findings of the Office of PCPD's investigation on recent personal data breaches and its recommendations, the Government will decide how the PDPO should be improved to enable the Office of PCPD to effectively strengthen the regulation on protection of personal data.

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## LCQ18: Monitoring quality of major public works projects

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (May 8):

Question:

It has been reported that since the commissioning of the Hong Kong Velodrome (HKV) which was built at a cost of \$1.1 billion, a total of 234 water seepage incidents have occurred in the HKV. Recently when the amber rainstorm signal was in force, there was even a serious accumulation of water in the HKV, which was caused by the automatic opening of the roof windows due to malfunctioning of the fire alarm system. Bemoaning the damage caused to the cycling track in the HKV, a local athlete, who is a winner in the Track Cycling World Championship, posted a message on the Internet that she personally mopped dry the water spots on the cycling track. Responses of members of the public on the Internet and the media have both expressed dissatisfaction with the water seepage incidents. In addition, enhancement works were needed to be carried out at The Grand Theatre of the Xiqu Centre, which was built at a cost of \$2.7 billion but had a utilisation rate of merely 31 per cent, just three months after its opening. Besides, the Central-Wan Chai Bypass (the Bypass) is installed with three sets of air purification system claiming to be the world's largest system which can filter 80 per cent of respirable suspended particulates and nitrogen dioxide from vehicle exhaust. Nevertheless, just several days after the commissioning of the Bypass, the operation of seven out of the 15 fans installed in the air purification system of the East Ventilation Building were suspended due to damage. Some commentators on current affairs have pointed out that various types of quality problems have emerged in major public works projects in

recent years on which the Government had spent substantial amounts of public money, and members of the public are in fact "paying money to buy sufferings". In this connection, will the Government inform this Council:

(1) whether it has assessed (i) the negative impacts on the Government's image caused, and (ii) if there has been a blow to the confidence of members of the public in the Government's governance ability and proper use of public money, by the successive emergence of quality problems in the aforesaid public works projects; if it has assessed, of the outcome; if it has not assessed, the reasons for that;

(2) as the Chief Secretary for Administration has recently said that the total infrastructure investments in transport, hospitals, housing developments, etc. in the coming decade are estimated to exceed \$1,000 billion, of the Government's new policies and measures to strengthen its monitoring and control of works projects and to enhance its efforts in holding the government officials in charge of works projects accountable for the projects, so as to avoid recurrence of quality problems in works projects; and

(3) whether it has reviewed if the Project Strategy and Governance Office is sufficiently empowered and staffed to monitor the costs and quality of the aforesaid works projects which will cost more than \$1,000 billion?

Reply:

President,

The Government has been implementing public works in a moderate and orderly manner to enhance people's quality of living, so as to sustain Hong Kong's long-term competitiveness and promote Hong Kong's economic development. In the next few years, the annual capital works investment is expected to rise to over \$100 billion, including projects such as the Central Kowloon Route and the Hospital Development Plan, while the annual total construction output will increase to over \$300 billion. In addition to this substantial workload, we are facing the challenges of extremely high construction cost and ageing construction work force. To tackle these challenges, we have been working hard on promoting relevant strategies to uplift the construction industry's delivery capacity, improving overall productivity as well as ensuring the works quality for smooth implementation of public works projects.

Our responses to the three parts of the question raised by the Hon Tse are as follows:

(1) We have in place a well-established and very effective works quality supervision system for public works projects. According to the World Economic Forum, Hong Kong is ranked number two in infrastructure. We also understand the public's concern about the performance and quality of public works. As announced in the 2019-20 Budget, in order to boost the overall productivity, quality, safety and environmental performance of the industry, we will lead

the construction industry in implementing "Construction 2.0" by advocating innovation, professionalisation and revitalisation to ensure the quality of public works by enhancing the performance of the industry. We are now deepening various measures in "Construction 2.0" for implementation as early as possible to meet the public's expectations for the performance of public works projects. As regards the cases mentioned by the Hon Tse, we understand that the relevant departments have already taken appropriate follow-up actions.

(2) At the moment, we are upgrading the Project Cost Management Office and will rename it the Project Strategy and Governance Office (PSGO) for implementing strategic initiatives and enhancing capabilities in cost surveillance and project governance. We will adopt a holistic approach to strengthen cost management and uplift the performance of public works projects by implementing major initiatives along the following directions:

- (i) strengthening the existing gateway process for cost management;
- (ii) enhancing project delivery capabilities;
- (iii) leading strategic developments to enhance productivity and cost-effectiveness; and
- (iv) enhancing collaboration with international counterparts and local industry stakeholders.

Besides, to enhance project delivery capabilities, the Government will establish the Centre of Excellence for Major Project Leaders (CoE) to instill in relevant public officers a more innovative mindset and equip them with enhanced leadership skills for delivering public works projects. We have earmarked \$40 million for the first three years of the CoE's operations for around 150 to 200 directorate officers in relevant bureaux and departments. The CoE will start the programme in mid-2019.

The Financial Secretary has mentioned in the 2019-20 Budget Speech that in order to ensure the performance of public works supervision, we will promote digitisation of the supervision system. Pilot projects will be launched to motivate site supervisors and contractors to use innovative technology to collect real-time data on site environment and works progress for record, monitoring and analysis purposes. We have set up a task force to plan and co-ordinate inter-departmental work in this regard.

(3) The PSGO will be a multi-disciplinary office dedicated to enhancing the performance of public works projects. It is headed by a Principal Government Engineer, who will be assisted by a Government Engineer, a Chief Engineer and ten non-directorate professional staff of various professional grades, such as Architect, Engineer, and Quantity Surveyor. We are now seeking the Finance Committee of Legislative Council's approval for the respective directorate grade posts. After the establishment of the PSGO, we will review the project strategy and resources of the PSGO from time to time to ensure sufficient staff and resources are in place to cope with the workload.

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## [Hong Kong Customs combats cross-boundary counterfeit goods activities \(with photo\)](#)

Hong Kong Customs conducted an operation between January and April to combat cross-boundary counterfeit goods destined for the United States. A total of about 55 000 suspected counterfeit goods with an estimated market value of about \$7 million were seized.

Hong Kong Customs has been working closely with the US Customs and Border Protection using intelligence exchanges, and took targeted enforcement action between January and April including stepped up inspection of suspicious express courier parcels destined for the United States.

During the operation, Hong Kong Customs seized a total of about 55 000 suspected counterfeit goods including mobile phone accessories, clothing, leather goods and footwear, effectively curbing cross-boundary counterfeit goods activities.

Hong Kong Customs will continue working closely with overseas law enforcement agencies to combat cross-boundary counterfeiting activities through intelligence exchanges and joint enforcement actions.

Under the Trade Descriptions Ordinance, any person who imports or exports any goods to which a forged trade mark is applied commits an offence. The maximum penalty upon conviction is a fine of \$500,000 and imprisonment for five years.

Members of the public may report any suspected counterfeiting activities to Customs' 24-hour hotline 2545 6182 or its dedicated crime-reporting email account ([crimereport@customs.gov.hk](mailto:crimereport@customs.gov.hk)).



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## **Fraudulent website related to Bank of China (Hong Kong) 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 Bank of China (Hong Kong) Limited on fraudulent website, 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 website concerned or has conducted any financial transactions through the website 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.

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## **LCQ17: Participation of small and medium enterprises and start-ups in government procurements**

Following is a question by the Hon Charles Mok and a written reply by the Acting Secretary for Financial Services and the Treasury, Mr Joseph Chan, in the Legislative Council today (May 8):

Question:

The Government introduced in April this year a new procurement policy which raised the weighting of the technical aspect in the overall score during tender assessment, in order to help small and medium enterprises (SMEs) and start-ups participate in tender exercises and create business opportunities. In this connection, will the Government inform this Council:

(1) in respect of the routine and non-routine procurements conducted by the various government departments in the past 12 months respectively:

(a) of (i) the number of procurements conducted and (ii) the average value of the contracts awarded, broken down by the technical/price weightings adopted for the procurements (set out in tables of the same format as Table 1); and



Table 1

Technical/ price weighting	Number of procurements conducted	Average value of contracts awarded
100/0		
90/10		
80/20		
70/30		
60/40		

(b) of the number of procurements conducted, broken down by (i) the mode of tendering and (ii) the group to which the contract values belonged (set out in tables of the same format as Table 2):

Table 2

Contract value (thousand dollars)	Mode of tendering			
	Open tendering	Selective tendering	Single or restricted tendering	Prequalified tendering
Below 2,000				
2,000 to below 5,000				
5,000 to below 10,000				
10,000 or above				

(2) of the number of policy bureaux/government departments using the full services of the e-Procurement System as at the end of March 2019; the total value of procurements completed through the e-Procurement System in the past three years, and the percentage of such value in the total value of public procurements completed in the same period;

(3) of the specific measures taken to streamline the procedure for tendering and contract formulation etc. in order to facilitate the participation in government procurements by SMEs which lack manpower and resources; whether it will conduct studies on further improving the e-Procurement System and applying financial technologies (including Faster Payment System) to help government departments enhance their efficiency in making payments to enterprises, with a view to improving the cash flow situation of the SMEs and start-ups concerned;

(4) whether it has studied the introduction of the practices of overseas places which aim to foster the participation of suppliers of varying sizes in government procurements (e.g. the United Kingdom Government's adoption of "Digital Marketplace" and simplification of the standard contracts for public-sector procurement) in order to facilitate the direct participation of SMEs in government procurement;

(5) whether it will step up the relevant publicity efforts (e.g. by organising more experience sharing sessions and seminars) to encourage enterprises in various industries to participate in government procurements, and more proactively provide SMEs and start-ups with information on government procurements (e.g. by including such enterprises in the lists of approved suppliers/contractors);

(6) whether, upon implementation of the new procurement policy, it has set any indicators and regularly analysed relevant statistics (including the characteristics of tenderers/contractors/suppliers/ service providers) in order to study and follow up the impacts of government procurement policy on economic, social and innovation activities; and

(7) whether it will encourage non-governmental organisations (including public organisations, quasi-government organisations and non-profit-making organisations), when conducting procurements, to make reference to the Government's adoption of a procurement policy which is not solely based on the "lowest bid wins" principle?

Reply:

President,

Having consulted the Government Logistics Department (GLD), Efficiency Office (EffO), Office of the Government Chief Information Officer (OGCIO), Electrical and Mechanical Services Department (EMSD), and the Trade and Industry Department (TID), my reply to the question is as follows:

(1) Prior to April 1, 2019, departments usually adopted the then-prevailing normally allowed range of technical weighting of 30 per cent – 40 per cent in the marking schemes for the procurement of stores, services (excluding consultancy services and works services) and revenue contracts. Departments might adopt an alternative technical weighting if they considered it necessary and with the prior approval of the relevant tender board. Since April 1, 2019, under the pro-innovation government procurement policy, the normally allowed technical weighting has been increased to 50 per cent – 70 per cent. Similarly, departments may adopt a higher technical weighting if necessary and with prior approval from the relevant tender board. Following the implementation of the new policy, we envisage that more government departments will adopt higher technical weightings than in the past and emphasise more on the quality of the tenders in awarding contracts.

Government procurements involve various departments, and are approved by different tender boards according to the value of the contracts. Regarding part (1) of the question, information of the contracts for procurement of stores, services (excluding consultancy services and works services) and revenue contracts approved by the relevant tender boards is listed out in accordance with the requirements in Table 1 and Table 2 of the Annex.

(2) Regarding the adoption of electronic means for conducting procurement,

the GLD has maintained two systems: (1) the e-Tender Box (ETB) system and (2) the Procurement and Contract Management System (PCMS).

The ETB system enables government departments to handle issues related to the procurement of stores through tendering. Through the Internet, registered suppliers can access to the system to download tender documents free of charge, submit tender proposals, enquire on tendering matters, and access to tender notices and notices of contract award.

The PCMS stores and manages contracts handled by the GLD. Contractors of the GLD can gain access to acceptance letters and electronic purchase orders via the relevant system. At present, there is no centralised system in the Government for the management of contracts by departments.

The relevant statistics of the ETB system and PCMS are at Table 3 and Table 4 of the Annex.

Apart from the abovementioned electronic procurement systems of the GLD, a total of 33 departments have fully adopted the e-Procurement Programme of OGCI0 to procure stores and services (excluding consultancy services and works services) of value not exceeding \$1.4 million. The other departments have also used the e-Procurement Programme to procure information technology products and relevant services of value not exceeding \$1.4 million. Information regarding the procurements completed via the e-Procurement Programme in the past three years is at Table 5 of the Annex.

(3) to (7) The Government has kept the procurement arrangements under review, with a view to streamlining and expediting the procurement process. Relevant specific work includes delegating the authority to award contracts to procuring departments; dispensing with the need to conduct financial vetting for low-value and/or low risk procurements to expedite the procurement process; and simplifying the legal vetting requirement for tender documents, etc. The aim is to streamline the approval procedures and expedite the procurement process.

In respect of facilitation for small and medium enterprises (SMEs) to participate in procurement, procuring departments are required to split large contracts into smaller ones as far as possible to facilitate the participation of SMEs and lower the risk of over-concentration of government contracts; simplify tender documents as far as possible and avoid setting over-prescriptive requirements in the tender documents, so as to relieve the burden of the tenderers and avoid unnecessarily disqualifying tenderers from participation in government procurement. At the same time, departments should adopt a phased payment approach where possible when formulating the payment arrangement and ensure timely payment in a reasonable timeframe, in order to relieve the stress on the contractors' cashflow.

On conducting procurement through electronic means, the GLD would keep in view closely the needs of the tenderers of procuring departments, review and explore from time to time further improvements to the relevant procurement systems. OGCI0 is also proactively encouraging departments to

utilise the e-Procurement Programme more extensively. The Treasury and the relevant government departments would continue to keep in view the development of payment means in the market, introduce new application of financial technology at appropriate junctures, and promote the application of payment by electronic means, so as to enhance the efficiency and cost-effectiveness of government payments.

Furthermore, as SMEs and start-ups may have limited experience and track record (especially in undertaking government contracts), starting from April 1, 2019, departments should in general not set tenderers' experience as an essential requirement for participating in procurement unless absolutely necessary and with prior approval. This new requirement minimises the entry barriers of participation in government procurement and helps encourage SMEs and start-ups to participate in bidding. Additionally, to avoid placing SMEs and start-ups in an unduly disadvantageous position, tenderers' experience (not being an essential requirement) should generally account for no more than 15 per cent of the total technical marks in the marking schemes.

Relevant departments also collaborate outside the procurement system to introduce measures to facilitate the participation of SMEs and start-ups in government procurement, and enhance the promotion of government procurement opportunities. The GLD has updated and published the Government's upcoming procurement plans on its website regularly to facilitate planning by prospective tenderers for participation in the bidding. The GLD would also join procuring departments' pre-tender briefings upon request to introduce the procurement procedures under the new policy. Eff0 would organise trade shows to invite the innovation and technology (I&T) sector to showcase available innovative solutions, and enhance the awareness and knowledge of procuring departments of the latest technology that can be sourced from the market. The first trade show was held on April 24, 2019, in which the GLD had also participated to introduce the new procurement arrangements.

On the other hand, EMSD and OGCI0 provide electronic platforms outside the procurement system to help connect and match government departments and innovative proposals of the industry. The "E&M InnoPortal" of EMSD publishes the technological needs of departments, and invites I&T organisations (such as universities and start-ups) to provide electrical- and mechanical-related I&T solutions in accordance with the needs for matching through the Portal for testing and verification. The "Smart Government Innovation Lab", soon to be launched by OGCI0, will gather government departments' needs, and invite innovative ideas and product proposals from the industry for addressing different city management challenges encountered by departments. The Lab will also arrange proof of concept and technology testing for the suitable solutions. Although the "E&M InnoPortal" and "Smart Government Innovation Lab" do not involve procurement arrangements, they can provide a collaborative platform to connect with the industry, so as to help departments understand the I&T developments and better prepare for their procurements.

Apart from the abovementioned new measures, other government departments will continue to implement different measures to support the development of

SMEs. For example, TID administers a number of funding schemes to assist Hong Kong enterprises, including SMEs, in obtaining financing and enhancing their overall competitiveness while the Department's Support and Consultation Centre for SMEs provides business information and consultation services to SMEs free of charge. If needed, the Centre would refer enquiries for information on government procurement from SMEs to the GLD for follow-up.

The GLD would collect from departments information of their procurements regularly for future review of the implementation of the new policy. Government procurement does not mean buying the cheapest. The Financial Services and the Treasury Bureau has shared the new arrangements and measures of government procurement through the relevant policy bureaux with various non-governmental organisations (NGOs), and encouraged the NGOs to adopt and make reference to them.