

[Latest test results of opening-up investigation in second stage of holistic assessment strategy for Hung Hom Station Extension under Shatin to Central Link Project](#)

The latest test results of the opening-up investigation in the second stage of the holistic assessment strategy for the Hung Hom Station Extension under the Shatin to Central Link (SCL) project (as at January 16) are now available at the Highways Department's website for the SCL project (www.hyd.gov.hk/en/road_and_railway/railway_projects/scl/index.html) for reference by the public.

[Cluster of Influenza A cases in Kowloon Central Cluster](#)

The following is issued on behalf of the Hospital Authority:

The spokesperson for Kowloon Central Cluster made the following announcement today (January 16):

Three patients (aged 27 to 59) in a male Psychiatric ward in Kowloon Hospital presented with upper respiratory tract infection symptoms since January 13. Clinical tests were arranged and the test results were positive for Influenza A. The patients concerned are being treated under isolation with stable condition.

Admission and visiting have been suspended in the ward concerned. Infection control measures have already been stepped up according to established guidelines. All other patients in the ward are under close surveillance.

In addition, three patients (two male and one female, aged 43 to 69) in a Medicine and Geriatrics ward in Kwong Wah Hospital presented with fever and respiratory symptoms since January 8. Clinical tests were arranged and the test results were positive for Influenza A. The patients concerned are being treated under isolation. Two patients are in stable condition, while the other patient is in critical condition due to underlying illness.

Infection control measures have already been stepped up according to established guidelines. All other patients in the ward are under close surveillance.

The above cases have been reported to the Hospital Authority Head Office and the Centre for Health Protection for necessary follow-up.

Secretary for Justice to visit Beijing

The Secretary for Justice, Ms Teresa Cheng, SC, will leave for Beijing tomorrow afternoon (January 17).

Ms Cheng will sign the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and of the Hong Kong Special Administrative Region with the Supreme People's Court in the morning on January 18. She will also call on the Ministry of Justice as well as the Hong Kong and Macao Affairs Office of the State Council.

Ms Cheng will return to Hong Kong on January 19.

Immigration Department to revise fees

A government spokesman today (January 16) announced that from March 25 this year, the Immigration Department will revise fees for some services, including the issuing of visas/entry permits and travel documents, genetic tests and despatch service for delivering travel documents to places outside Hong Kong.

"It is the Government's established policy that fees charged by the Government should in general be set at levels sufficient to recover the full cost of providing the service," the spokesman said.

A recent costing review showed that the fees payable for services including the issuing of visas/entry permits and travel documents, genetic tests and despatch service for delivering travel documents to places outside Hong Kong are not adequate to recover the full cost of providing those services.

"Based on the government-wide general guidelines for fee increases, the fees of the services concerned will be increased by 9 per cent to 21 per cent. The proposals will have little impact on the daily life of most people

and very limited impact on general business activities," the spokesman added.

The Immigration Department regularly reviews the arrangements for handling various types of applications and services with a view to improving the cost-effectiveness as well as the quality of services. Measures are in place to control the cost of providing the services.

The relevant amendment regulation will be tabled at the Legislative Council on January 23. The fee revision will take effect after completion of the necessary legislative procedures. A table setting out the existing and revised fees is in the Annex.

LCQ1: The making of prosecution decisions by Department of Justice

Following is a question by the Hon Chu Hoi-dick and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (January 16):

Question:

Earlier on, the Independent Commission Against Corruption completed an investigation into the case concerning Mr Leung Chun-ying, the Chief Executive of the last term, entering into an agreement with UGL Limited and receiving payments from the company during his term of office. The Department of Justice (DoJ) issued a statement last month, stating that after having carefully considered the investigation reports and relevant materials, it considered that there was insufficient evidence to institute prosecution against Mr Leung. Before making the decision, the DoJ had not sought legal advice from outside counsel, which was at variance with the practices previously adopted by the DoJ for handling the cases concerning the then or former senior public officers such as Mr Antony Leung, Mr Rafael Hui, Mr Franklin Lam, Mr Donald Tsang and Mr Timothy Tong. This has aroused criticisms from some members of the public. In this connection, will the Government inform this Council:

(1) as the DoJ pointed out in the aforesaid statement that "... Mr Leung's acts in negotiating the takeover with UGL were congruent with the interests of DTZ", whether the facts based on which the DoJ arrived at such conclusion included DTZ's written advice stating that its interests had not been undermined;

(2) as the DoJ pointed out in three statements it issued in 2012 and 2013 that if there were sensitivities with regard to a particular case, legal advice from outside counsel would be sought before making a prosecution decision, whether the incumbent Secretary for Justice (SJ) has revised such

practice since she took office; if so, of the details and reasons for that; if not, why SJ, when responding to media enquiries, remarked that "we shall not brief out any case unless it involves a member of the DoJ"; and

(3) given that "the decision not to prosecute" made by the DoJ has aroused criticisms and queries from some members of the public (including whether the decision was related to Mr Leung's position as a state leader), whether the DoJ will expeditiously seek legal advice from outside counsel and then review "the decision not to prosecute"?

Reply:

President,

Article 63 of the Basic Law provides that the Department of Justice (DoJ) of the Hong Kong Special Administrative Region (HKSAR) Government "shall control criminal prosecutions, free from any interference".

That Basic Law's guarantee of independence ensures that prosecutors within the Department may act independently without political or other improper or undue influence. As the head of the DoJ, I have a constitutional duty and responsibility to make decisions and supervise the conduct of criminal prosecutions.

The Prosecution Code published by the DoJ elaborates on the independence and role of the prosecutor.

Paragraph 1.1 stipulates that "a prosecutor is required to act in the general public interest, but independently as a 'minister of justice'. In making decisions and exercising discretion, a prosecutor must act fairly and dispassionately on the basis of the law, the facts provable by the admissible evidence, other relevant information known to the prosecution and any applicable policy or guidelines."

Paragraph 1.2 stipulates that "a prosecutor must not be influenced by:

- (a) any investigatory, political, media, community or individual interest or representation;
- (d) the possible political effect on the government, any political party, any group or individual; and
- (e) possible media or public reaction to the decision."

The legal discussions within the DoJ are always conducted with professionalism, without fear or favour, absolutely free from political or other irrelevant considerations, and the details of the discussions needs to be kept in confidence.

Decisions to prosecute or not, as the case may be, must be based on an objective and professional assessment of the available evidence and the law, and be in accordance with the Prosecution Code. The factors and the test to be considered in making a decision to prosecute are set out in Chapter 5 of the Prosecution Code. According to paragraphs 5.3 to 5.5 of the Prosecution Code, the prosecution must consider whether there is sufficient evidence to

institute a prosecution, and the test is whether the evidence is sufficient to demonstrate a reasonable prospect of conviction; if there is sufficient evidence to initiate a prosecution, the prosecution will then consider whether it is in the public interest to do so.

Concerning the case raised in the question, the DoJ issued a statement on December 12, 2018, stating that there was insufficient evidence to institute prosecution after careful consideration of the investigation reports and the relevant materials submitted by the Independent Commission Against Corruption. Similarly, the decision was made according to the above principle and free from the influence of the identity of the persons involved or political factors.

(1) The question touches upon the details of the case. I cannot talk about the case. Also, considering that the case is now under judicial review proceedings, I shall not and cannot comment on or add anything regarding the details of such decision. I would like to emphasise that according to paragraph 23.4 of the Prosecution Code, there are circumstances (e.g. due to legal professional privilege or personal privacy concern etc.) in which the giving of reasons may be contrary to the public interest or otherwise inappropriate. Particular note should be taken of sub-paragraph (c), which stipulates that the giving of reasons "may adversely affect the administration of justice (especially in the case of a decision not to prosecute where public discussion may amount to a public trial without the safeguards of the criminal justice process)".

(2) The briefing out of criminal cases has two parts, which are before prosecutorial decision is made and after prosecution. Regarding the former one, it is a norm of the DoJ to make prosecutorial decision by members of the DoJ. When a case involves member(s) of the DoJ, it is appropriate to brief out the case for legal advice. Further, depending on the need of the case, the DoJ, as it previously mentioned to this Council, may resort to briefing out when:

- (a) there is a need for expert assistance where the requisite skill is not available in the DoJ;
- (b) there is no suitable in-house counsel to appear in court for the HKSAR;
- (c) the size, complexity, quantum and length of a case so dictate;
- (d) it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interests;
- (e) there is a need for continuity and economy; and
- (f) there is a need for advice or proceedings involving members of the DoJ.

The question refers to three statements issued by the DoJ in 2012 and 2013 regarding cases with sensitivities. According to our record, prosecutorial decisions were made in respect of two of the cases without seeking outside legal advice. It can therefore be seen that whether it is a case with sensitivity or not is never a guideline for mandatory briefing out.

It is not a norm of the DoJ to brief out cases for legal advice. Over the past three years, the Prosecutions Division of the DoJ provided an

average of over 13 000 items of legal advice per year. Save for those involving member(s) of the DoJ, the numbers of cases in respect of which outside legal advice had been obtained before making the prosecutorial decisions were 0, 1, and 0 respectively in 2018, 2017 and 2016. It is evident that the DoJ has made prosecutorial decisions without seeking outside legal advice in a great majority of cases.

(3) The DoJ bases its prosecutorial decision entirely on evidence, the Prosecution Code as well as applicable laws. The prosecutorial decision has been made. If there is reason such as the law enforcement agency discovers new evidence and considers that it is necessary to seek the DoJ's legal advice again, we will handle the case.

Thank you, President.