

LCQ5: Provision of legal services and legal aid to unlawful societies and their members

Following is a question by the Hon Au Nok-hin and a reply by the Acting Chief Secretary for Administration, Mr Wong Kam-sing, in the Legislative Council today (November 28):

Question:

Under Section 8 of the Societies Ordinance, the Secretary for Security may, on the recommendation by the Societies Officer, prohibit the operation or continued operation of any society in Hong Kong (prohibited society) by order published in the Gazette. A prohibited society and its office-bearer(s) or member(s) may appeal to the Chief Executive in Council against the making of the order and may also lodge a judicial review with the court against the outcome of the appeal. In this connection, will the Government inform this Council:

(1) as Section 20(1) of the Societies Ordinance stipulates that any person who gives any aid to an unlawful society shall be guilty of an offence, whether the Government has assessed if a legal practitioner who renders legal service to a prohibited society or its office-bearer(s) or member(s) in respect of an appeal or judicial review lodged by the latter contravenes the said provision; if it has assessed and the outcome is in the affirmative, whether it has assessed if the said provision is in conflict with Article 35 of the Basic Law, which stipulates that Hong Kong residents have the right to access to legal advice and choice of lawyers for representation in the courts, etc; and

(2) whether the Legal Aid Department will, upon receipt of a legal aid application in respect of a judicial review case involving a prohibited society, consider factors other than the "means test" and "merits test"; whether it has assessed if the Director of Legal Aid will contravene Section 20(1) of the Societies Ordinance by granting of legal aid to such type of cases?

Reply:

President,

On September 24, 2018, the Secretary for Security made an order in accordance with Section 8(2) of the Societies Ordinance to prohibit the operation or continued operation of the Hong Kong National Party in Hong Kong. The decision was necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others. The society lodged an appeal to the Chief Executive in Council on October 24. As the appeal proceedings are on-going, the HKSAR Government will

not comment further on the case. I am going to respond to general questions only, and the reply should not be regarded as response to individual cases.

In response to the various questions raised by the Honourable Member, our consolidated reply is as follows.

(1) Section 20(1) of the Societies Ordinance states that "any person who is or acts as a member of an unlawful society or attends a meeting of an unlawful society or who pays money or gives any aid to or for the purposes of an unlawful society shall be guilty of an offence".

The question of the Honourable Member concerns if a lawyer provides legal services to an unlawful society in relation to the statutory appeal process or a judicial review (JR), whether this will be regarded as giving aid for the purposes of an unlawful society, thereby contravening the Societies Ordinance.

Article 35 of the Basic Law stipulates that "Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies". Article 10 of the Hong Kong Bill of Rights also stipulates that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

When a society becomes an unlawful society by virtue of an order made by the Secretary for Security in accordance with Section 8 of the Ordinance, it may appeal to the Chief Executive in Council in accordance with Section 8(7) of the same Ordinance. Section 8(7) provides a statutory channel for appeal. Besides, the society also has the right to seek JR. The society's seeking of legal advice or legal representation in the process of the appeal or JR in principle does not conflict with what is stated in Section 20(1) of the Societies Ordinance.

Furthermore, Article 63 of the Basic Law states that "the Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference". Prosecutors within the Department of Justice always uphold the constitutional duty under the Basic Law in handling all prosecution work in a fair, impartial and open manner. If anyone is suspected of committing a criminal offence, including the criminal offences under the Societies Ordinance, the law enforcement agency will commence investigation of the case and will pass the evidence and information gathered to the Department of Justice. The Department of Justice will, with regard to what has taken place and the case facts and in accordance with the applicable laws, Prosecution Code and evidence, consider whether to make a criminal prosecution. A prosecutor must act in accordance with the guidelines set out in the Prosecution Code in making a decision to prosecute or not to prosecute. The fundamental principle is that unless there is sufficient admissible evidence so that the case has a reasonable prospect of conviction, and that it is in the public interest to prosecute, no prosecution should be

commenced or continued. In the process of discharging its duties, the Department of Justice will ensure that Hong Kong residents enjoy the various rights protected under the Basic Law.

As regards whether individual cases contravene the law, the circumstances of each case are different and cannot be generalised.

(2) The policy objective of legal aid is to ensure that all those who meet the criteria set out in the Legal Aid Ordinance (LAO) (Cap. 91) and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. To qualify for legal aid, a person, irrespective of residence and nationality, is required to satisfy both the means test and merits test as provided by the LAO.

At present, a person whose financial resources do not exceed \$307,130 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS), which covers committal proceedings in the Magistrates' Courts, as well as civil and criminal proceedings in the District Court or higher courts. Those with financial resources exceeding the statutory limit of OLAS but are below \$1,535,650 may apply for legal aid under the self-financing Supplementary Legal Aid Scheme.

In conducting the merits test, the Legal Aid Department (LAD) will consider the background, evidence available and legal principles applicable to the case so as to determine whether legal aid should be granted. Before issuing a legal aid certificate, LAD must, in assessing the merits, be satisfied that there are reasonable grounds or points of law involved for which it is desirable to grant legal aid. The criteria for conducting the merits test for legal aid applications involving JR are the same as those for other civil legal aid applications. That is, according to section 10(3) of the LAO, legal aid would only be granted to applicants who can show that their cases have reasonable grounds for conducting JR proceedings.

According to section 26 of the LAO, if an application for legal aid is refused, the applicant may appeal to the Registrar of the High Court whose decision is final.

Regarding the question on whether the Government has assessed if the Director of Legal Aid will contravene section 20(1) of the Societies Ordinance by granting legal aid to an application relating to JR involving a prohibited society, we do not comment on hypothetical questions.

[Persons in custody at Pik Uk](#)

Correctional Institution attain good examination results

Twenty-one young persons in custody at Pik Uk Correctional Institution (PUCI) of the Correctional Services Department (CSD) were presented with certificates at a ceremony today (November 28) in recognition of their efforts and academic achievements.

Last year, 84 persons in custody sat for various academic and vocational examinations including the Hong Kong Diploma of Secondary Education (HKDSE) Examination, Cambridge English examinations, examinations of the Open University of Hong Kong and examinations organised by City and Guilds International Limited, the Vocational Training Council, the Construction Industry Council and other examination bodies, covering the subjects of computer literacy, hairstyling, elementary Cantonese cooking and kitchen operations and basic laundry skills as well as the Intermediate Trade Test in Joinery. They achieved 215 passes including 20 merits. Of the candidates, seven persons in custody sat for 42 papers for the HKDSE Examination in 2018 and obtained level 2 or above in 27 papers. The 21 persons in custody who were presented with certificates today passed 89 papers.

Officiating at the ceremony, the Chairman of Fung Ying Seen Koon (FYSK), Mr Leung Tak-wah, said that the CSD is committed to providing safe custody and appropriate rehabilitation programmes to help persons in custody integrate into society. The CSD has taken the initiative in recent years in community education with an aim to prevent crime and reduce recidivism. In accordance with the principles of "Promotion of Virtue with the Teachings of Daoism and Salvation of Humanity", the FYSK has also engaged in community services as well as rehabilitation activities, such as producing a series of rehabilitation micro-movies in collaboration with the CSD to disseminate the messages of leading a law-abiding and drug-free life as well as supporting offender rehabilitation. Moreover, the FYSK generously donated \$200,000 to the Prisoners' Welfare Fund to procure multimedia equipment at PUCI in this year so as to further improve the existing "Shall We Talk" broadcasting programme for youths. Furthermore, Mr Leung encouraged the persons in custody to uphold the theme of the ceremony, "Vision in mind, persistence in learning", in order to endeavour to learn and turn over a new leaf with the support of their families and the staff of the CSD.

At the ceremony, a representative of persons in custody spoke of his determination to start a new life and pursue his studies at the institution with the support of CSD staff and his family, and his mother expressed her joy at seeing the positive changes in her son. A band performance and a musical drama were staged by persons in custody at PUCI to convey gratitude to all those helping in their rehabilitation.

Also attending the ceremony were the Deputy Commissioner of Correctional Services, Mr Wong Kwok-hing; representatives of non-governmental and community organisations; community leaders; and family members of certificate

recipients.

PUCI has a capacity of 385 penal places for young male remand and convicted persons in custody. The department provides half-day education programmes and half-day vocational training for the young persons in custody to help them rehabilitate and prepare for their reintegration into society.

LCQ21: Development of industries on Lantau Island

Following is a question by the Hon Jimmy Ng and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (November 28):

Question:

There are views that with the Hong Kong-Zhuhai-Macao Bridge opening to traffic recently, Lantau Island should not be regarded as merely the western edge of Hong Kong but the gateway to the world, and it can also play a pivotal role in the Guangdong-Hong Kong-Macao Bay Area. With an area of 147.16 square kilometres, Lantau Island is the largest outlying island in Hong Kong, but its current population is only 170 000. In 2017, the Government announced the Sustainable Lantau Blueprint, adopting "Development in the North and Conservation for the South" as the future positioning for Lantau Island, as well as exploring the development opportunities in the areas of economy, people's livelihood, tourism, conservation, etc. There are comments that the development of Lantau Island has to be driven by industries, and its planning should not be carried out simply for the purpose of addressing the housing problem. In this connection, will the Government inform this Council:

(1) as the authorities indicated in reply to my question on May 17, 2017 that "in the next stage of detailed planning for strengthening the economic land uses along the northern shore of Lantau, we will further study the proposed Hong Kong Branding Industries Park having regard to considerations such as compatibility with the surrounding land uses, environmental and traffic impacts, as well as market responses, economic benefits and financial arrangements", of the progress of the related work;

(2) given that this year's Policy Address has put forward the Lantau Tomorrow Vision, proposing to create 1 700 hectares of land off the eastern side of Lantau Island by reclamation for the construction of artificial islands in order to develop an "Aerotropolis" and the third Core Business District, but there are comments that it will be difficult to practically promote the development of Lantau Island without a clear positioning for industries,

whether the authorities have plans to study the objectives and tactics for the development of industries on Lantau Island; if so, of the details; if not, the reasons for that; and

(3) as it is pointed out by some members of the innovation and technology (I&T) sector that Hong Kong enjoys the strengths and potentials for development into an international I&T hub, and Lantau Island is situated at the forefront of the Guangdong-Hong Kong-Macao Bay Area, whether the authorities have any established stance and concrete plans for attracting international I&T new industries to establish their bases on Lantau Island and the artificial islands on its eastern side; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Commerce and Economic Development Bureau, the Transport and Housing Bureau, the Planning Department and the Civil Engineering and Development Department, my consolidated reply to various parts of the question is as follows.

With the benefit of commissioning a number of strategic infrastructure facilities including the Hong Kong-Zhuhai-Macao Bridge and the Hong Kong International Airport (HKIA) as well as the Three-Runway System (3RS) which is now being built, Lantau becomes the "Double Gateway" connecting Hong Kong to other parts of the world and the Greater Pearl River Delta. The Sustainable Lantau Blueprint (Blueprint) promulgated by the Government in June 2017 outlined the overarching principle of "Development in the North; Conservation for the South". On the one hand, the Blueprint makes good use of the development opportunities of Lantau to facilitate housing, economic development and trade, leisure, recreation and tourism. On the other hand, the Blueprint strengthens conservation of Lantau's unique and inherent natural and cultural resources. The Blueprint also sets out the strategic position of and planning principles for Lantau development in different aspects. On the economic side, the Blueprint suggests to develop Lantau into a new platform that supports the development of Hong Kong as an economic hub for the four existing pillar industries, namely financial services, tourism, trading and logistics, and professional and producer services.

The Government has invited the Airport Authority Hong Kong to submit a proposal for the topside development at the Hong Kong Boundary Crossing Facilities Island of Hong Kong-Zhuhai-Macao Bridge. Together with the 3RS, the high value-added logistics centre at the South Cargo Precinct, the SKYCITY development project and the future development of the AsiaWorld-Expo, Lantau will become an "Aerotropolis" connecting the Guangdong-Hong Kong-Macao Greater Bay Area and the world, reinforcing and enhancing the position of Hong Kong as an international business centre.

The Tung Chung New Town Extension project, the reclamation works of which is now underway, will provide more than 870 000 square metres of

commercial floor space, including business complexes of various scales, as well as retail, dining and entertainment facilities. In particular, the metro core area at Tung Chung East (TCE) will be developed into a smart business node, comprising mainly sites near the proposed TCE Railway Station and the public transport interchange(s) which possess potential for high-density commercial development. As for the waterfront at the northern part of TCE, there will be commercial facilities including retail and hotel facilities apart from the promenade itself to create a vibrant waterfront and for developing the TCE waterfront into a comprehensive public open space and leisure hub within the district, so as to complement the economic development of the North Lantau and create varied job opportunities. Besides, leveraging on the synergy effect of the existing attractions on Lantau, the proposed Sunny Bay reclamation project seeks to develop a leisure and entertainment node thereon as a year-round vacation destination with international and local mega competitions/sports events. We plan to submit funding application on the planning and engineering study for the Sunny Bay reclamation to the Legislative Council (LegCo) in a timely manner, with a view to commencing detailed planning of the land uses and various impact assessments. We will conduct consultation in respect of the detailed proposals in due course.

Building on the Blueprint, the 2018 Policy Address put forward the Lantau Tomorrow Vision, of which the first phase will focus on the studies for developing the artificial islands of about 1 000 hectares near Kau Yi Chau in the Central Waters. Apart from providing land for housing and supporting facilities, the artificial islands will support the development of the third Core Business District (CBD3), capable of providing about four million square metres of commercial/office floor space. The CBD3 will not only complement the Core Business District in Central to form a metropolitan business core and provide ample room for growth of traditional and emerging industries, it will also create synergy with the future "Aerotropolis" and other commercial developments on the North Lantau, thereby turning Lantau into a supporting service hub for financial and commercial industries with close ties with the HKIA and its surrounding region. This will strengthen Hong Kong's function as a regional connector to bring closer Hong Kong with the rest of the world and other cities in the Greater Bay Area.

We plan to seek funding approval from the LegCo in the first or second quarter next year with a view to commencing the studies on the Kau Yi Chau artificial islands in the Central Waters. The studies will explore, inter alia, the market positioning of the proposed CBD3, the development strategy and detailed planning of land uses. In the process, we will consider optimising the strategic position of the Central Waters and integrating it with the planned major commercial developments of the North Lantau, in order to promote Hong Kong's economic and industry developments including innovation and technology and others.

LCQ2: Participation of Hong Kong Garrison in charitable activities

Following is a question by the Hon Chan Chi-chuen and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (November 28):

Question:

The Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region (Garrison Law) stipulates that the People's Liberation Army Hong Kong Garrison (HK Garrison) shall not interfere in the local affairs of the Hong Kong Special Administrative Region (SAR), and that the SAR Government may, when necessary, ask the Central Government for assistance from the HK Garrison in the maintenance of public order or in disaster relief. It has been reported that at the invitation of an organisation, a group of members of the HK Garrison in uniform went to a country park last month in a volunteer effort to clear fallen trees and broken branches which were left behind after the onslaught of a storm in Hong Kong. As the SAR Government had not sought assistance from the HK Garrison, some members of the public queried whether the aforesaid activity had violated the Garrison Law. In this connection, will the Government inform this Council:

- (1) whether it knows the number of occasions in each of the past five years on which members of the HK Garrison in uniform performed volunteer service outside military facilities and sites, as well as the name and nature of the activities concerned;
- (2) whether it will urge members of the HK Garrison not to wear uniform when performing volunteer service, so as to avoid being mistaken to be on duty; if so, of the details; if not, the reasons for that; and
- (3) whether it will take measures to prevent political groups from inviting members of the HK Garrison to perform volunteer service in name but actually participate in district activities, so as to avoid the HK Garrison being said to support individual political groups; if so, of the details; if not, the reasons for that?

Reply:

President,

The Chinese People's Liberation Army Hong Kong Garrison (the Hong Kong Garrison) is the military forces stationed by the Central People's Government (CPG) in the Hong Kong Special Administrative Region (HKSAR) to perform defence functions for maintaining the sovereignty, unity and territorial integrity of the State. Over the years, the Hong Kong Garrison has reserved no effort in conducting various defence exercises, focusing on enhancing

combat level, and has been serving as a solid back-up for upholding the HKSAR's long term prosperity and stability. Besides, the Hong Kong Garrison is also a member of the Hong Kong community, seeing Hong Kong as its home with strong commitment to protecting it.

ã€ã€ã€The Hong Kong Garrison has been performing its functions and responsibilities in the HKSAR in strict accordance with the Basic Law, Garrison Law and other relevant laws, and actively complementing the HKSAR Government's law-abiding governance. Since returning to the Motherland, the Hong Kong Garrison has always been well-disciplined and law-abiding. These are witnessed and recognised by the people in Hong Kong.

ã€ã€ã€According to Article 14 of the Basic Law, the CPG shall be responsible for the defence of the HKSAR, and the HKSAR Government shall be responsible for the maintenance of public order in the HKSAR. Military forces stationed by the CPG in the HKSAR for defence shall not interfere in the local affairs of the HKSAR. The HKSAR Government may, when necessary, ask the CPG for assistance from the Hong Kong Garrison in the maintenance of public order and in disaster relief. In addition to abiding by national laws, members of the Hong Kong Garrison shall abide by the laws of the HKSAR. Since returning to the Motherland, Article 14 of the Basic Law has never been activated by the HKSAR Government.

ã€ã€ã€The Garrison Law, listed under Annex III of the Basic Law, are national laws applicable in the HKSAR. The functions and responsibilities of the Hong Kong Garrison are set out in detail in the Garrison Law. According to Article 5 of the Garrison Law, defence functions and responsibilities performed by the Hong Kong Garrison include preparing against and resisting aggression, and safeguarding the security of the HKSAR; carrying out defence duties; controlling military facilities; and handling foreign-related military affairs. According to Article 16 of the Garrison Law, obligations fulfilled by members of the Hong Kong Garrison include to be loyal to their Motherland, perform their functions and responsibilities, maintain the security, honour and interests of the motherland, and safeguard the security of Hong Kong; to abide by national laws and the laws of the HKSAR, and observe military discipline; to respect the organs of political powers, the social system and the ways of life of the HKSAR; to cherish the public prosperity of the HKSAR and the private property of Hong Kong residents and other persons; and to observe public ethics and cultivate civility and courtesy. It is stated in Articles 9 and 10 of the Garrison Law respectively that the Hong Kong Garrison shall not interfere in the local affairs of the HKSAR, and the HKSAR Government shall support the Hong Kong Garrison in its performance of defence functions and responsibilities and guarantee the lawful rights and interests of the Hong Kong Garrison and its members.

ã€ã€ã€Regarding an activity took place in October 2018 which was mentioned in the question, the HKSAR Government had already publicly pointed out in a clear way that the event concerned was a charitable activity participated by the Hong Kong Garrison on invitation. The purpose was to assist in clearing the fallen trees, withered branches and trash brought by typhoon Mangkhut within country park area. The activity concerned was not related to Article

14 of the Basic Law in respect of the HKSAR Government seeking assistance from the Hong Kong Garrison for disaster relief. In fact, after typhoon Mangkhut, different organisations and volunteers have been assisting in the clearance work of country parks under the arrangements of or after notifying the Agriculture, Fisheries and Conservation Department (AFCD). As regards the charitable activity concerned, the coordinating party has made prior notification to AFCD. The participation of the Hong Kong Garrison in charitable activities is not inconsistent with any regulation in the Basic Law, Garrison Law and other relevant laws.

ã€ã€€The various parts of the question are replied as follow:

(1) It is not a requirement nor a restriction under the Basic Law, Garrison Law and the laws in Hong Kong for the Hong Kong Garrison to seek the approval of the HKSAR Government, notify the HKSAR Government or receive the invitation from the HKSAR Government prior to conducting any charitable activities.

Having returned to the Motherland for 21 years, the Hong Kong Garrison has participated in considerable number of charitable activities. The HKSAR Government has not maintained a detailed record on such activities. However, according to our understanding, the Hong Kong Garrison has organised open days for their military sites and participated in the organisation of the summer camps for youth and tertiary students for many times. Apart from within the military sites, the Hong Kong Garrison has also been conducting various charitable activities from time to time in different districts, including taking part in tree planting and blood donation events on invitation, deploying members to visit elderly homes and kindergartens, as well as deploying the military band and cultural troupe to conduct voluntary performance for different organisations on invitation.

(2) Whether and when members of the Hong Kong Garrison would be required to wear uniforms, and under what policies and standards that such decisions are made, are the Hong Kong Garrison's management over its members and are under the subject of defence. The Hong Kong Garrison has been making decisions on its members' outfits according to the military internal regulations and orders as well as the need of their functions, responsibilities and the activities concerned. According to our understanding, the military internal regulations and orders have provided clear guidelines and basis for servicemen to wear uniform in public. In fact, members of the Hong Kong Garrison have been frequently wearing uniforms when conducting charitable activities and attending major festive occasions, prominent celebration and commemorative events, as well as other social activities outside military sites in the past. Uniform signifies the military identity of servicemen. Wearing uniform to attend public events will not only enhance the pride and commitment of the members of the Hong Kong Garrison, it will also enable public understanding of the Hong Kong Garrison. The law-abiding behaviour and charitable services of the Hong Kong Garrison shall be respected and supported.

(3) The functions, responsibilities, obligations and discipline, etc. in

relation to the Hong Kong Garrison are strictly regulated by the Garrison Law. According to Article 9 of the Garrison Law, the Hong Kong Garrison shall not interfere in the local affairs of the HKSAR. Article 17 of the Garrison Law provides that members of the Hong Kong Garrison shall not join any political, religious or public organisations in Hong Kong. Article 18 of the Garrison Law provides that members of the Hong Kong Garrison shall not engage in any other activity incompatible with their functions and responsibilities as servicemen. Since returning to the Motherland, the Hong Kong Garrison has been managing its members in strict accordance with the law and has received the respect, support and affection of the people of the HKSAR. The HKSAR Government has been truly grateful to the solid yet low key contributions made by the Hong Kong Garrison over the years. We firmly believe that the Hong Kong Garrison will continue to follow their excellent tradition to perform their functions and responsibilities according to the law.

Thank you, President.

Public consultation on phase two of review on Broadcasting Ordinance and Telecommunications Ordinance launched

The Government today (November 28) launched a three-month public consultation on phase two of the review on the Broadcasting Ordinance (BO) and the Telecommunications Ordinance (TO). The review aims to set out proposals pertaining to the improvement of the telecommunications regulatory framework to prepare for the arrival of Fifth Generation Mobile Communications (5G) and Internet of Things (IoT) technologies, and to facilitate the development of the telecommunications industry in Hong Kong.

"The next big wave of telecommunications evolution is the arrival of 5G, which empowers massive adoption of IoT and smart communication platforms. We need to ensure that our regulatory framework is 5G-ready," a spokesman for the Commerce and Economic Development Bureau said.

"In conducting the review, we have made reference to our operational experience, as well as feedback and comments received from operators and other stakeholders. We are satisfied that overall, the existing framework is generally effective in regulating various services since the full liberalisation of the telecommunications market in 2003. While fundamental changes to our legislation are not required, there is room to introduce measures to keep pace with the latest developments in telecommunications technologies," the spokesman added.

In the consultation document, the Government proposes the following four

measures under two themes, namely, "Embracing the Arrival of 5G and IoT Technologies" and "Trade Facilitation":

Embracing the arrival of 5G and IoT technologies

1. Regulation of telecommunications functions of devices in the 5G and IoT era

In the near future, in addition to dedicated telecommunications equipment and devices (e.g. land-line telephones, fax machines and mobile handsets), other things in our daily life can potentially be equipped with telecommunications functions. They can be connected to and communicate with one another. There is a need to regulate the telecommunications functions of various IoT devices. After review, the Government considers that the telecommunications functions of IoT devices should continue to be regulated by the TO and proposes that the Communications Authority (CA)'s regulatory powers and duties should focus on the telecommunications functions of telecommunications equipment and 5G and IoT devices (i.e. integrity of and compatibility with telecommunications networks and the level of non-ionising electromagnetic radiation), whereas the non-telecommunications functions of such equipment and devices (e.g. electrical and other general safety aspects) should be regulated by their respective dedicated legislation as appropriate.

2. Protection of underground telecommunications infrastructure

In Hong Kong, underground spaces are packed with telephone lines and optical fibre cables that constitute essential infrastructure of our telecommunications network. With the imminent arrival of 5G services and more extensive use of smart city applications, the integrity of our telecommunications infrastructure will become even more crucial. In this connection, the Government proposes to create new criminal offences under the TO against negligent damage to underground telecommunications facilities. Compliance with relevant codes of practice or guidelines promulgated by the CA shall constitute a defence to a charge under the proposed offences.

Trade facilitation

3. Simplifying the issue of non-carrier licences

To facilitate the timely introduction of innovative services in the 5G era, the Government proposes to simplify the existing mechanism for issuing non-carrier licences by empowering the Secretary for Commerce and Economic Development to publish a notice in the Gazette to specify non-carrier licences instead of specifying these non-carrier licences under Schedule 1 to the TO. Under the new mechanism, the issue of non-carrier licences will not involve subsidiary legislation amendment procedures. The new measure will be conducive to the rapid development of the telecommunications industry in embracing new technologies and new applications.

4. Improving the appeal mechanism under the TO

In today's increasingly complex, vibrant and fast-developing telecommunications market, telecommunications operators would expect more cost-effective and efficient means to redress their grievances against certain regulatory decisions. After the review, the Government proposes to improve the appeal functions under the TO by establishing an independent appeal board to deal with certain decisions by the CA. Reference will be made to the existing Telecommunications (Competition Provisions) Appeal Board in mapping out the composition and modus operandi of the proposed appeal board.

For details of the above legislative amendment proposals, please refer to the consultation document ([www.cedb.gov.hk/ccib/eng/paper/pdf/BOT0Review_2\(eng\).pdf](http://www.cedb.gov.hk/ccib/eng/paper/pdf/BOT0Review_2(eng).pdf)).

The review on the B0 and the T0 is being conducted in two phases. The public consultation on phase one on the review of the broadcasting regulatory framework was completed in May 2018. Stakeholders in general supported the direction of the proposals to update the regulatory framework. The Government aims to introduce an amendment bill into the Legislative Council (LegCo) in 2019 to give effect to the relaxation proposals presented in the public consultation.

The public consultation on phase two on the review of the telecommunications regulatory framework will close on February 27, 2019. The Government aims to introduce an amendment bill into the LegCo in 2019.

Members of the public may send in their views direct by email to BOT0Review2@cedb.gov.hk, by fax to 2351 2791 or by post to the Ordinance Review Team, Commerce and Economic Development Bureau (Communications and Creative Industries Branch), 21/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong.