

FEHD cancels licence of light refreshment restaurant in Jordan

The Director of Food and Environmental Hygiene today (December 11) cancelled the licence of a light refreshment restaurant in Jordan, as the operator repeatedly breached the Food Business Regulation (FBR) by illegally extending its business area and storing utensils in an open space.

The restaurant is located at Flat D on the ground floor at 89 Shanghai Street, Jordan.

"In April and June this year, two convictions for extending the business area illegally were recorded against the restaurant. A total fine of \$13,100 was levied by the court and 30 demerit points were registered against the licensee under the department's demerit points system. The contraventions resulted in the cancellation of the licence," a spokesman for the Food and Environmental Hygiene Department (FEHD) said.

The licensee of the food premises had a record of four convictions for extending the business area illegally and storing utensils in an open space between October 2017 and September last year. A total fine of \$24,000 was levied and 45 demerit points were registered. The breaches led to licence suspensions for seven days in August last year and 14 days between December last year and January this year respectively.

The spokesman reminded licensees of food premises to comply with the FBR or their licences could be suspended or cancelled.

Licensed food premises are required to exhibit a sign, at a conspicuous place near the main entrance, indicating that the premises have been licensed. A list of licensed food premises is available on the FEHD's website (www.fehd.gov.hk/english/licensing/licence-foodPremises-rest.html).

Fifth Protocol to Avoidance of Double Taxation Arrangement between the Mainland and Hong Kong in force

The Fifth Protocol to the Comprehensive Avoidance of Double Taxation Arrangement between the Mainland and Hong Kong has entered into force, a Government spokesman said today (December 11).

The Fifth Protocol to the Arrangement was signed in July this year. It

incorporates into the Arrangement a new teachers and researchers article to provide tax relief to eligible Hong Kong and Mainland teachers and researchers working on the other side, as well as measures to prevent tax treaty abuse to ensure that the Arrangement follows the latest international tax standard. It came into force on December 6, 2019, after completion of approval procedures on both sides. It will apply in Hong Kong to income derived in the years of assessment beginning on or after April 1, 2020.

SEN to visit Guangzhou tomorrow

The Secretary for the Environment, Mr Wong Kam-sing, will lead a delegation to Guangzhou tomorrow (December 12) to attend meetings of the Hong Kong-Guangdong Joint Working Group on Environmental Protection and Combating Climate Change (JWGEPCCC) and the Hong Kong-Guangdong Joint Working Group on Cleaner Production (JWGCP).

In the morning, Mr Wong will co-chair with the Director-General of the Department of Ecology and Environment of Guangdong Province, Mr Lu Xiulu, the first meeting of the JWGEPCCC to review the progress of collaboration between the two sides in 2019 and agree on a work plan for 2020. The JWGEPCCC was formed by the merger of the former Hong Kong-Guangdong Joint Working Group on Sustainable Development and Environmental Protection and the former Hong Kong-Guangdong Joint Liaison Group on Combating Climate Change.

In the afternoon, Mr Wong will co-chair the sixth meeting of the JWGCP with the Director-General of the Department of Industry and Information Technology of Guangdong Province, Mr Tu Gaokun, to review the work progress of 2019 and discuss the work plan for 2020.

Mr Wong will return to Hong Kong tomorrow evening.

LCQ1: Prosecution work of the Department of Justice

Following is a question by the Hon Luk Chung-hung and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (December 11):

Question:

The cumulative number of persons arrested, since June this year in relation to the disturbances arising from the proposed legislative amendments, is as high as several thousands, with some of them being, one after another, charged with the relevant offences. On the 4th of last month, when a case involving five defendants was brought before the Eastern Magistrates' Courts, a misnomer for one of the defendants and inconsistency in the Chinese and English versions of the charges were uncovered in the consent to prosecution of the Department of Justice (DoJ). As a result, the prosecution had to withdraw the charges against all the defendants. Later on, the DoJ instituted prosecutions against them afresh. Regarding the prosecution work of the DoJ, will the Government inform this Council:

(1) of the number of cases in each of the past five years in which the trial processes were affected by errors made by the prosecutors, and the details of such errors; the number of cases in which the trials were discontinued, the number of defendants who were released by the court unconditionally, and the number of convicted persons who were imposed a more lenient punishment, as a result of such errors;

(2) whether the DoJ has reviewed the causes of the prosecutors' making such errors so as to avoid the recurrence of such errors; if so, of the details; if not, the reasons for that; whether the officers concerned were subject to any disciplinary actions; if so, of the details; if not, the reasons for that; and

(3) whether, in order to cope with the increasingly heavy prosecution workload brought about by handling the cases relating to the disturbances arising from the proposed legislative amendments, the DoJ has examined the employment of additional manpower and measures for expediting prosecution work; if so, of the details; if not, the reasons for that?

Reply:

President,

The rule of law is the core value of Hong Kong. A criminal justice process includes investigation, prosecution, defence, adjudication and punishment, of which prosecutors carry out their roles as an integral part of it. When conducting prosecutions, a prosecutor is required to comply with and promote the rule of law, fairly and objectively assisting the court to arrive at the truth and to do justice in accordance with the law. Professional, impartial and independent prosecution work is pivotal in safeguarding the rule of law in Hong Kong.

Article 63 of the Basic Law provides that "the Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference". Prosecutors of the Department of Justice (DoJ) always shoulder the constitutional duty enshrined therein.

The Prosecution Code (the Code) compiled by the DoJ provides reference

points and guidance for prosecutors in prosecution work. It states that the responsibility of prosecutors is to apply the highest of professional standards in handling criminal cases. According to paragraph 1.2 of the Code, a prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. In making decisions of whether or not to prosecute, the DoJ must make an objective and professional assessment of the available evidence and applicable law, and act in accordance with the Code. Cases will not be handled differently owing to the political beliefs or background of the persons involved.

The Secretary for Justice, the Director of Public Prosecutions and the prosecution team have all along been discharging their prosecutorial duties fairly and without prejudice or favour in accordance with the above principles so as to safeguard criminal justice.

In relation to the Hon Luk Chung-hung's specific questions, the DoJ's detailed reply is as follows:

(1) The DoJ does not maintain the requested figures. Generally, when conducting prosecutions, including handling prosecution documents, prosecutors of the DoJ are required to handle all criminal cases professionally and in strict accordance with the law and the relevant guidelines in the Code.

Regarding the handling of the case mentioned at the Eastern Magistrates' Courts on November 4 this year, the DoJ had made submissions to the Court, which were accepted by the Court. As the five defendants concerned have been immediately arrested and charged, and the relevant legal proceedings remain ongoing, it is not appropriate for the DoJ to comment further.

(2) The civil service performance management system for civil servants formulated by the Civil Service Bureau serves as an official mechanism to monitor and assess staff performance. Civil servants' performance is reflected in an honest, objective and comprehensive manner in their appraisal reports.

Where any act, conduct or behaviour of an officer is in breach of the Civil Service Code or government regulations, the department concerned will take appropriate follow-up actions in accordance with established procedures. If there is evidence upon investigation that a civil servant has misconducted himself, or a civil servant has been convicted of criminal offence by the Court, appropriate disciplinary action will be taken, including imposing disciplinary punishment of verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal, etc. The above mechanism is applicable to civil servants of different grades and ranks including prosecutors of the DoJ.

The Code also sets out the role and duties of prosecutors. DoJ's prosecutors have always discharged their prosecutorial responsibilities in accordance with the relevant principles and have at all times exercised the highest standards of integrity and care in maintaining proper administration

of justice.

The DoJ attaches great importance to the professional qualities of prosecutors and provides them with continuing education and training. Moreover, the Prosecutions Division (PD) of the DoJ has established procedures to regularly remind all prosecutors of points to note. It also reviews and updates from time to time the approaches and procedures in handling criminal cases for enhancement of prosecution work.

(3) All criminal investigations are conducted by law enforcement agencies, which will, when necessary, refer cases to the DoJ for independent decisions on whether to prosecute. The DoJ at all times seeks to provide legal advice to law enforcement agencies, including the Police, as expeditiously as possible. The processing time from commencement of investigation to institution of prosecution for each case depends on various factors, such as the time required for investigation by law enforcement agencies, the volume of evidence, and the nature and complexity of the case.

There are currently over 200 prosecutors in the PD of the DoJ. There has been a dedicated team of prosecutors within the PD for handling cases concerning public order events to ensure consistency in the handling approach. In view of the recent increase in the number of public order event cases, the DoJ has also arranged for officers who had formerly served in that dedicated team to assist in work relating to prosecutorial decisions. Subject to the overall operational needs of the PD, we do not rule out the possibility of introducing measures as necessary in the future such as deployment of additional manpower to handle relevant cases.

The DoJ will continue to maintain communications with the Police and to conduct its prosecution work in a fair, effective and efficient manner.

Thank you, President.

LCQ13: Regulation of products containing microbeads

Following is a question by the Hon Kenneth Leung and a written reply by the Secretary for the Environment, Mr Wong Kam-sing, in the Legislative Council today (December 11):

Question:

In the Supplement to the Policy Address of this year, the Government indicated that it would implement a voluntary scheme for phasing out personal care and cosmetic products containing microbeads (Voluntary Scheme) to

encourage the trade to stop the manufacture, import and sale of such type of products and help consumers choose microbead-free products. In this connection, will the Government inform this Council:

(1) as it is learnt that enacting legislation to ban products containing microbeads has become a global trend (countries which have enacted such legislation include the United States, the United Kingdom and South Korea), of the justifications for the Government to merely implement the Voluntary Scheme instead of enacting legislation; whether the Government will undertake to introduce legislation within the coming three years to comprehensively regulate the manufacture, import and sale of products containing microbeads; if so, of the details and timetable; if not, the justifications for that;

(2) of the details (including the implementation details, monitoring approach, and anticipated participation rate and effect) of the Voluntary Scheme;

(3) whether it will take measures or provide incentives to encourage small and medium retailers to participate in the Voluntary Scheme; if so, of the details; if not, the reasons for that; and

(4) given that the Environmental Protection Department commenced a one-year consultancy study in mid-2018 on personal care and cosmetic products containing microbeads, when the relevant study report will be published?

Reply:

President,

Reply to the question raised by the Hon Kenneth Leung is as follows:

(1) The Environmental Protection Department commissioned a consultancy study in April 2018 to review the international trend of regulating personal care and cosmetic products (PCCPs) containing microbeads and to collect and analyse relevant local market information, as well as to suggest a regulatory approach applicable to Hong Kong. The study cited a report compiled by the International Union for Conservation of Nature stating that the majority of microplastics present in the ocean comes from natural degradation of plastic waste, while only 15 per cent to 31 per cent may originate from other specific sources, namely, plastic pellets raw materials, tyres, synthetic textiles, marine coatings, road markings, city dust and personal care products. Among these specific sources, the release of microbeads to the ocean from the use of PCCPs only accounts for about 2 per cent of the global microplastics emission quantity. Although by proportion this is a very minimal source, it is regarded as the only source of "intentional release". Hence various measures have been progressively implemented around the world to control the release of microbeads at the source.

Currently, voluntary phase-out and legislative control are two main approaches adopted in different places according to their particular circumstances to replace microbeads with alternative materials in the

products progressively.

In the situation of Hong Kong, the local PCCP market is largely dependent on import, with manufacturing bases set up at places outside Hong Kong, including those countries and regions that have adopted different means and coverage to ban the manufacture of some types of microbead-containing products. Therefore, it will take quite some time to work out an appropriate and clear regulatory approach, to consult the various stakeholder groups in the trade, to go through the legislative procedures, and to allow time for the industry to clear out their stock. As such, whether to serve as a transitional arrangement in the legislative process or to respond to the society's strong aspiration for Hong Kong to catch up with the international trend of eliminating products containing microbeads as soon as possible, putting in place a voluntary phase-out scheme in the short term would be indispensable.

Based on the above analysis, we adopted the consultant's recommendation to implement a voluntary scheme first for phasing out PCCPs containing microbeads, aiming to encourage the trade to stop the production, importation and sale of these products, and to assist consumers in choosing microbead-free products. We will review the effectiveness of the voluntary phase-out scheme two years after its launch, and assess whether it is suitable to adopt legislative control over products containing microbeads in the Hong Kong market.

(2) The study information indicates that some places around the world, such as Australia and the Netherlands, have successfully applied voluntary schemes to progressively phase out microbeads. For example, the Australian Government launched in 2017 a voluntary programme with the phase-out rate assessed regularly. Based on data collected up to 2018, 97 per cent of PCCPs in Australia are already microbead-free.

Making reference to successful overseas experience, the Government has initial plan to establish a "Microbead-free Charter" for implementing a voluntary phase-out scheme. Participants, taking due consideration of their operational conditions, can set their own targets and timetables for reducing or ceasing the production, importation and sale of PCCPs containing microbeads and strive to achieve the targets within the set timeframe. In the course of the scheme, we will follow up on the participants' phase-out progress, and conduct sample surveys and product testing for the purpose of examining and reporting the effectiveness of the scheme. At the same time, the Government will launch complementary publicity and education activities to provide the public with appropriate and accurate information, and to enhance their understanding of microbeads-related subjects. We plan to roll out the voluntary phase-out scheme in the second half of 2020. Its details, including the execution plan, monitoring methodology, effectiveness measurement, etc are still being drafted.

(3) We understand that, from the retailers' point of view, in particular small and medium-sized retailers having limited capability in market research and less resource for advertising and promotion, the necessary incentives for

them to participate in ceasing the sale of PCCPs containing microbeads would be that they can obtain reliable ingredient information from manufacturers or importers and receive some support on public promotion. In fact, in recent years some international brand-name companies have taken voluntary actions to phase out microbeads gradually and replace them with natural alternatives (e.g. salt crystals, nut shells) in their products to enhance corporate image and competitiveness, and there has been an increasing variety of microbead-free products in the market. Therefore, on one hand, we plan to publicise the list of merchants that have joined the "Microbead-free Charter" and organise promotion activities such as launching and award presentation ceremonies to show encouragement and recognition. On the other hand, we would also provide the public with a list of microbead-free products and information on microbeads alternatives so as to share the retailers' responsibility on product checking and to facilitate green purchasing by consumers.

(4) The key findings and recommendations of the consultancy study have been covered in this reply. The consultancy study report is still being compiled and its relevant contents would be released in due course.