

LCQ3: Classification of articles by Obscene Articles Tribunal

Following is a question by the Hon Ma Fung-kwok and a reply by the Acting Secretary for Commerce and Economic Development, Dr Bernard Chan, in the Legislative Council today (October 31):

Question:

The Obscene Articles Tribunal (OAT) gave *Killing Commendatore*, a literary work newly released by a renowned Japanese writer, an interim classification as a Class II (Indecent) article and made that classification official on July 12 and 26 this year respectively. The incident has aroused heated discussions among the culture and publication sectors as well as the public. In this connection, will the Government inform this Council:

(1) given that the OAT shall give notice in newspapers after it has made an interim classification in respect of an article and any person who submitted, or would have been entitled to submit, the article may require the OAT to review that interim classification within five days of that interim classification taking effect, but such time limit may not be adequate for the persons concerned who are in places outside Hong Kong to learn of that interim classification and require a review, whether the Government will improve the relevant arrangements; if so, of the details; if not, the reasons for that;

(2) whether it will make public the reasons for the OAT to classify *Killing Commendatore* as a Class II article, and enact legislation to require that the reasons for the OAT to classify an article as Class II or III be made public; if so, of the details; if not, the reasons for that; and

(3) given that the Government, upon reviewing the Control of Obscene and Indecent Articles Ordinance, proposed in 2015 an array of improvement measures (including increasing the minimum number of adjudicators at each the OAT hearing from two to four and increasing the total number of adjudicators from 500 to 1 500), of the reasons why such measures have not yet been implemented and when they will be implemented?

Reply:

President,

The Control of Obscene and Indecent Articles Ordinance (Cap. 390) (COIAO) establishes the Obscene Articles Tribunal (OAT). The OAT is a specialised tribunal under the Judiciary. One of its functions is to classify whether an article is obscene or indecent. The OAT comprises a presiding magistrate and adjudicators drawn from a panel of adjudicators. Adjudicators are members of the public appointed by the Chief Justice so as to reflect the standards of morality, decency and propriety generally accepted by the

community. The COIAO provides avenues for review and appeal for those who may be aggrieved by a decision of the OAT.

My reply to the various parts of the question raised by the Hon Ma Fung-
kwok is as follows:

(1) Pursuant to section 13(1) of the COIAO, the author, printer, manufacturer, publisher, importer, distributor or owner of the copyright of any article or any person who commissions the design, production or publication of any article may submit that article for classification by the OAT. The OAT shall, within five days of that submission, make an interim classification in respect of that article (with Class I being neither obscene nor indecent, Class II being indecent, and Class III being obscene).

Under the existing legislation, any author, printer, manufacturer, publisher, importer, distributor or owner of the copyright of the article concerned or any person who commissions the design, production or publication of the article concerned may require the OAT to review an interim classification within five days of that interim classification taking effect. The review is conducted at a full hearing in public.

As section 15 of the COIAO requires that a request to review an article's interim classification be made "within five days of that interim classification taking effect", the Government and the OAT cannot make any other arrangements. Any changes to the above require amendments to the relevant legal provisions.

(2) The OAT strictly follows the provisions in the COIAO when handling the classification of articles. Pursuant to section 10(1) of the COIAO, when classifying whether an article is obscene or indecent, the OAT shall have regard to standards of morality, decency and propriety that are generally accepted by reasonable members of the community; the dominant effect of an article or of matter as a whole; the location where and the persons to whom the article is published or the matter is displayed; and whether the article or matter has an honest purpose.

Section 14(1) of the COIAO stipulates that when the OAT is considering an article for the purpose of making an interim classification, it shall do so in private and without the attendance of the applicant or any other person. According to section 14(3)(a) of the COIAO, the OAT shall not be required to give any reasons for any interim classification.

(3) Since the Government proposed legislative amendments concerning the regulatory framework under the COIAO in 2015, we have been liaising with the relevant government departments and the Judiciary on the proposed legislative amendments to the COIAO over the past three years with a view to resolving the relevant legal issues. Regarding the proposal to increase the total number of adjudicators from 500 to 1 500, the Judiciary originally planned to implement it upon enactment of the legislative amendments. In view of the latest developments, the Judiciary is now considering various suggestions to enhance the representativeness of the OAT.

Besides, the Office for Film, Newspaper and Article Administration has also been actively organising publicity and public education programmes relating to the COIAO over the past several years.

As for the way forward of the review of the COIAO, in line with the Secretary for Commerce and Economic Development's response to a Member's enquiry at last week's meeting of the Panel on Information Technology and Broadcasting, the Government is currently reviewing whether the legislative amendments proposed in 2015 could fully address recent concerns raised by members of the public over the regulatory framework and the adjudicatory system under the COIAO. We plan to discuss the relevant issues in detail with the Panel on Information Technology and Broadcasting.