

LCQ7: Default in payment of wages by main contractor of Ying Tung Estate

Following is a question by the Dr Hon Fernando Cheung and a written reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (April 17):

Question:

It has been reported that earlier, a number of construction workers engaged in the construction of Ying Tung Estate in Tung Chung lodged complaints, alleging that Hsin Chong Construction Company Limited (HCCCL) had failed to pay their wages for the months from October last year to January this year, involving a total amount of around \$1.5 million. They said that as the Hong Kong Housing Authority (HA) had learnt about the wage default in August last year but still allowed HCCCL to continue with the works, it should be culpable for the problem of wage default. HA has indicated that as the proceedings on winding-up of HCCCL has commenced and provisional liquidators have been appointed, HA may contravene the legislation related to winding-up if it pays the outstanding wages on behalf of HCCCL. In this connection, will the Government inform this Council:

(1) whether HA, being the owner of Ying Tung Estate, will pay the outstanding wages on behalf of HCCCL, its contractor; if HA will, of the details; if not, the reasons for that;

(2) of the reasons why HA did not pay the outstanding wages on behalf of HCCCL during the period from its learning about the wage default last year to the time before the proceedings on winding-up of HCCCL commenced;

(3) whether the contract for the construction of Ying Tung Estate signed between HA and HCCCL has stipulated that the former may pay outstanding wages on behalf of the latter; if so, of the details; if not, the reasons for that;

(4) of the measures HA has put in place to protect the rights and interests of the workers concerned upon learning about the aforesaid wage default;

(5) of the details of HA's mechanism for handling contractors defaulting on payment of workers' wages; whether HA will review such mechanism in the light of this incident; and

(6) whether it has reviewed the effectiveness of the existing (i) eligibility criteria laid down by HA for contractors bidding for works projects, (ii) criteria adopted by HA for assessing works tender submissions, and (iii) mechanisms established by HA for monitoring contractors' performance and terminating their contracts, in preventing the occurrence of incidents of contractors defaulting on payment of workers' wages; whether it will conduct a review on such matters in the light of the aforesaid incident?

Reply:

President,

My consolidated reply to the question raised by Hon Fernando Cheung Chiu-hung is set out follows:

The Hong Kong Housing Authority (HA) has always required its works contractors to effect timely wage payments to their workers, and closely monitored the situation of wage payments to workers during the contractual construction period. If HA is aware of any late or outstanding wage payment, it will follow up with the contractors, and refer such cases as necessary to the Labour Department for their further investigation and enforcement under the Employment Ordinance.

HA will continue to monitor various aspects of the contractors' performance through the Performance Assessment Scoring System (PASS), including the Wage Monitoring System (WMS). The relevant assessment scores will affect the contractors' eligibility for tendering and chance of contract awarding. HA will also take direct regulatory actions against contractors with unsatisfactory performance. HA has been reviewing the implementation of WMS and PASS, and would, during this process, invite representatives of the construction industry to attend working meetings and collect their views.

Works of Ying Tung Estate Development Project in Tung Chung was completed in November 2017 and has since entered the Maintenance Period (MP). During the MP, the main contractor, Hsin Chong Construction Company Limited (HCCCL) has the responsibility to complete all outstanding works and defects rectification works. In 2017 and 2018, there were several cases of late wage payment by HCCCL. Whenever HA was aware of any such cases, HA would, according to the established mechanism, conduct investigation immediately and take proactive follow-up actions, including issuing multiple letter to remind, warn and urge HCCCL to take actions to settle the relevant problems, and conducting meetings with the project management team of HCCCL. With HA's intervention, HCCCL has already settled all late wage payment in or before September 2018.

Since the proceedings on petition for winding-up of HCCCL was commenced in August 2018, the relevant matters have to be dealt with in accordance with the statutory procedures and instructions of the provisional liquidators. Although the relevant construction contract has provisions allowing HA to pay, under specified conditions, the wages in arrears out of any money due to HCCCL under the contract, payment of the wages in arrears may be considered void under the Companies (Winding Up and Miscellaneous Provisions) Ordinance in the present circumstance where the winding up petition has been presented against HCCCL. HA has proactively contacted the provisional liquidators to explore and discuss the possibility of implementing the provisions on payment of wages in arrears so as to offer help to the unpaid employees. HA has also made a number of appeals to the workers through the workers' union to provide HA with the details of the decision of the Labour Tribunal and proofs of

their employment under the Ying Tung Estate Development Project in Tung Chung, including (but not limited to) their employment contracts, on-site working records, etc. in order to facilitate HA's follow-up with the provisional liquidators.

Furthermore, the Labour Department (LD) has been offering appropriate assistance to the affected workers. The workers involved had filed their claims against HCCCL at LD and requested for recovery from HCCCL. LD has arranged conciliation meetings between the two parties and requested HCCCL to take prompt actions to pay the wages in arrears. As HCCCL did not turn up at the relevant conciliation meetings, LD had transferred the cases to the Labour Tribunal as per the workers' requests. Since HCCCL still could not settle the outstanding wages, including the payment in lieu of notice for termination of employment, etc. after the judgement of the Labour Tribunal being issued, LD had assisted the workers involved to apply for ex-gratia payments from the Protection of Wages on Insolvency Fund (the Fund) for wages in arrears and related statutory entitlements under the Protection of Wages on Insolvency Ordinance. HA will also assist the affected works by contacting the Social Welfare Department, such that they could be provided with suitable follow-up in accordance with their welfare needs.