

# Contractor of Tseung Kwan O – Lam Tin Tunnel project convicted for illegally carrying out construction works on Sunday

Fortress Development Limited, the contractor for reclamation works under the Tseung Kwan O – Lam Tin Tunnel (TKO-LTT) project, illegally carried out construction works during a holiday and caused noise nuisance to residents of Ocean Shores. The contractor was convicted and fined \$10,000 at Kwun Tong Magistrates' Courts today (June 27) for contravening the Noise Control Ordinance (NCO).

The Environmental Protection Department (EPD) received report from a member of the public that construction works were carried out at the sea area fronting O King Road on a Sunday. Investigations by the EPD staff confirmed that a non-permitted tug boat was utilised by the TKO-LTT contractor to carry out marine construction works on June 25, 2017, and caused noise nuisance, which violated the requirements of the NCO. The EPD subsequently prosecuted the contractor, Fortress Development Limited. The EPD also requested the Civil Engineering and Development Department to follow up on the case to ensure that construction works will be carried out in compliance with the statutory requirements.

The NCO aims to protect the public from disturbance of rest. The EPD spokesman stressed that members of the construction industry should schedule works properly and carry out the works during daytime and non-general holidays as far as possible. If the construction work has to be conducted during the restricted hours (between 7pm and 7am on the following day, or at any time on a general holiday), the contractor has to obtain a valid construction noise permit (CNP) from the EPD. The construction works shall commence only when the CNP has been granted upon completion of assessment to support that its noise level would comply with regulatory requirements. Only specified powered mechanical equipment could be used for the construction works and contractors must also implement noise mitigation measures to minimise noise nuisance as stipulated by the CNP, including the erection of fences and noise barriers at the sites, to reduce the impact of noise to nearby residents as far as possible. Otherwise, it constitutes an offence. First-time offenders are liable to a maximum fine of \$100,000. A maximum fine of \$200,000 may be imposed on second or subsequent convictions.

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## Tender awarded for Kwai Chung petrol filling station site

The Lands Department today (June 27) announced that the tender for a petrol filling station site, Kwai Chung Town Lot No. 527 at Container Port Road, Kwai Chung, New Territories, has been awarded to the highest tenderer, Sinopec (Hong Kong) Limited (parent company: Sinopec Marketing Company Limited), on a 21-year land grant at a premium of \$545.8 million. The site is an existing, re-tendered site for the development of a petrol filling station.

The tenderers other than the successful tenderer, in alphabetical order, were:

- (1) Chevron Hong Kong Limited
- (2) ExxonMobil Hong Kong Limited
- (3) PetroChina International (Hong Kong) Corporation Limited

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## Pesticide residue exceeds legal limit in cabbage sample

The Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department today (June 27) announced that a cabbage sample was found to have pesticide residue at a level exceeding the legal limit. The CFS is following up on the case.

A CFS spokesman said, "The CFS collected the cabbage sample at import level for testing under its routine Food Surveillance Programme. The test result showed that the sample contained methamidophos at a level of 0.12 parts per million (ppm), exceeding the maximum residue limit (MRL) of 0.05 ppm.

"Based on the level of pesticide residue detected in the sample, adverse health effects would not be caused under usual consumption."

Generally speaking, to reduce pesticide residues in vegetables, members of the public can rinse vegetables thoroughly under clean running water, and scrub produce with hard surfaces with a clean brush to remove dirt and substances including pesticides and contaminants from the surface and the crevices, when appropriate.

Any person who imports, manufactures or sells any food not in compliance with the requirements of the Pesticide Residues in Food Regulation (Cap

132CM) concerning pesticide residues commits an offence and is liable to a maximum fine of \$50,000 and to imprisonment for six months upon conviction.

Since the regulation came into effect on August 1, 2014, the CFS has taken over 146 900 samples at import, wholesale and retail levels for testing for pesticide residues. Together with the unsatisfactory sample announced today, a total of 224 food samples (including 216 vegetable and fruit samples) have been detected as having excessive pesticide residues. The overall unsatisfactory rate is less than 0.2 per cent.

The spokesman added that excessive pesticide residues in food may arise from the trade not observing Good Agricultural Practice, e.g. using excessive pesticides and/or not allowing sufficient time for pesticides to decompose before harvesting. The MRLs of pesticide residues in food set in the Regulation are not safety indicators. They are the maximum concentrations of pesticide residues to be permitted in a food commodity under Good Agricultural Practice when applying pesticides. In this connection, consumption of food with pesticide residues higher than the MRLs will not necessarily lead to any adverse health effects.

The CFS will follow up on the unsatisfactory result, including tracing the source of the food in question and taking samples for testing. Investigation is ongoing.

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## [LCQ5: Use of Lands Resumption Ordinance by Government](#)

Following is a question by the Hon Lam Cheuk-ting and a reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (June 27):

Question:

When she attended this Council's Question and Answer Session held on the third of last month, the Chief Executive (CE) advised that the Lands Resumption Ordinance should not be invoked arbitrarily because "owners whose private ownership is being infringed upon ... will apply for judicial review against the Government", and such lawsuits might last for as long as eight to nine years. However, in reply to a written question raised by a Member of this Council on the 30th of last month, the Government indicated that over the past two decades from July 1997 to December 2017, there were only eight judicial review cases lodged by landowners arising from the Government's invocation of the Ordinance for resumption of their private lands. For such cases, the time taken from the Court's granting of leave for judicial review to its handing down of judgments on the judicial review ranged from nine days, the shortest, to no more than one year, the longest. In this

connection, will the Government inform this Council:

(1) whether it has assessed if CE's aforesaid statement is erroneous, and if it will mislead this Council and members of the public into believing that invocation of the Lands Resumption Ordinance will very likely give rise to litigations; if it has assessed and the outcome is in the affirmative, whether it will advise CE to rescind that statement; and

(2) whether it will undertake that it will only invoke the Lands Resumption Ordinance and not adopt the public-private partnership approach, in order to tap into private developers' agricultural lands for carrying out housing development projects?

Reply:

President,

Both Articles 6 and 105 of the Basic Law mention about the protection of "the right of private ownership of property" by the Hong Kong Special Administrative Region in accordance with law. The Government must adhere strictly to the spirit of and the constraints imposed by the law, and cannot neglect the importance of respecting the right of private ownership of property when deciding to exercise its statutory power to resume private land.

According to the Lands Resumption Ordinance (LRO), the Government may invoke the LRO to resume private land, having regard to the Government's needs, only for an established "public purpose" pursuant to the LRO. In other words, the invocation of the LRO cannot be possibly based on a slogan or an intention. The Government has no justification and power to invoke the LRO to resume private land before the relevant "public purpose" has been established.

In the written reply to a Member's question on May 30, the Government mentioned that a total of eight judicial review (JR) cases arising from the invocation of the LRO for resumption of private land were lodged by landowners from July 1, 1997 to December 31, 2017 and the Government had lost none of the cases according to court rulings. This truly reflects that the Government has all along been acting strictly upon the spirit of and the constraints imposed by the law and invoking the LRO to resume private land carefully and prudently only for an established "public purpose" pursuant to the LRO.

My reply to Hon Lam Cheuk-ting's question is as follows:

(1) In the Question and Answer Session of this Council on May 3, the Chief Executive's statement is in line with the Government's established policy stated in the preamble above. As regards lawsuit over the Wan Chai Outline Zoning Plan (OZP) quoted by the Chief Executive in that Question and Answer Session, it was intended to demonstrate that JR proceedings involving land and the right of private ownership of property could be lengthy and the Government must therefore act prudently and carefully. Taking the above Wan

Chai OZP as an example, it involved a number of JR applications since 2011 and as the arising follow-up work is still in progress, the OZP has yet to be submitted to the Chief Executive in Council for approval, thereby affecting the development of various sites within the district, including the former Wan Chai Police Station and adjacent area.

(2) Recently, there seems to be a view within the community that advocating public-private partnership to develop private agricultural land reserve in the New Territories would mean the Government giving up the right to resume private land through invoking the LRO for development; or that when the Government invokes the LRO to resume private land, it will no longer be necessary to allow land owners to use their privately-owned land for development. I must clarify that this kind of view that regards land resumption by the Government and private development as mutually exclusive is incorrect, and the Government certainly does not agree.

Firstly, the Government has been invoking the LRO to resume private land for development after establishing a "public purpose". In future, resumption of private land will continue to take place as well for different new development areas (NDAs) and public housing projects. For example, the Government resumed private land for different subsidised housing projects, such as Sha Tin Areas 16 and 58D in the past, whereas an estimated total of about 500 hectares of private land within the boundary of a few mega land development projects in the coming years, which include Wang Chau Development Phase 1, Kwu Tung North and Fanling North NDAs and the Hung Shui Kiu NDA, is planned to be resumed and the Government will continue to resume private land for different public housing projects.

On the other hand, not all land is suitable for "public purpose" or public housing development. In fact, development needed by the community is not confined to those needs for a "public purpose". It is therefore normal that land owners (including developers) will make use of their privately owned land for development. Many existing commercial and residential properties in Hong Kong were developed under this mode. Indeed, private development, including lease modification, land exchange and redevelopment, has been one of the major sources of land for private residential flats, and it has provided land for construction of more than 50 000 flats over the past decade. This development mode has been long standing in Hong Kong, which, as a free economy, respects the right of private ownership of property and allows the private market to play to its strengths.

One of the short-to-medium-term options that the Task Force on Land Supply (Task Force) recently put forward in its public engagement exercise is the development of private agricultural land reserve in the New Territories through public-private partnership. The Task Force's intention was to explore a possible way out through unleashing the development potential of agricultural land in the short-to-medium term. The Task Force indicated clearly that the relevant discussion must be premised on the understanding that the Government would set up a fair, open and transparent mechanism in future, in order to create a win-win situation for the general public and the private land owners, including the provision of private and public housing on privately-owned land. There are views that it will be more straightforward

for the Government to invoke the LRO for public housing development given the public character. As explained above, whilst the Government will continue to invoke the LRO timely for development, the balanced and healthy development of society cannot solely rely on Government's power. As a matter of fact, it would be difficult for the Government to make planning and take forward development for all the land simultaneously. When the Government implements the overall planning and development programmes in different districts according to priorities, we do not rule out the possibility of developers devising development plans on their privately-owned land. The Government considers it worthwhile for the community to keep an open mind to explore initiatives that are economically viable while meeting society's overall needs.

In fact, the Government has been providing reasonable incentives according to its policy objectives through various programmes and initiatives with a view to capitalising on the forces of the market and non-governmental organisations to facilitate the implementation of different development projects in order to expedite the development and release the development potentials of private sites such that the public and the whole community can benefit earlier. Examples of such mode of cooperation include:

(i) Industrial building revitalisation measures – to provide more floor space for suitable uses while improving the safety of industrial buildings.

(ii) "Facilitation Scheme for Provision of Pedestrian Links by the Private Sector" – to waive the land premium for lease modification with a view to facilitating and encouraging private landowners to construct footbridges or subways at their own cost for provision of a safe, comfortable and convenient pedestrian network.

(iii) New town development – to allow private land owners of sites planned for private developments to pursue their individual private projects through lease modification applications, while being responsible for most of the land acquisition work.

(iv) "Special Scheme on Privately Owned Sites for Welfare Uses" – to encourage non-governmental organisations to better utilise their own sites through expansion, redevelopment or new development to provide social welfare services.

(v) "Youth Hostel Scheme" – to fully fund non-governmental organisations to construct youth hostels on sites owned by them. Upon completion, NGOs will operate the youth hostels on a self-financing basis.

President, the Government will continue with its standing practice of resuming private land for development by invoking the LRO prudently under appropriate conditions and at the same time provide room for the private market and non-governmental organisations to optimise their land resources.

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## LC: Opening remarks by CS for proposed resolution under District Court Ordinance and Small Claims Tribunal Ordinance

Following is the opening remarks (translated from Chinese) made by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, for the proposed resolution under the District Court Ordinance (Cap. 336) and the Small Claims Tribunal Ordinance (Cap. 338) in the Legislative Council today (June 27):

President,

I move that the first motion under my name as printed on the Agenda be passed to increase the civil jurisdictional limits of the District Court (DC). I will also shortly be moving the second motion under my name as printed on the Agenda be passed to increase the civil jurisdictional limit of the Small Claims Tribunal (SCT).

In 2015-16, the Judiciary conducted a review of the civil jurisdictional limits of DC and SCT. Having analysed the impact of increasing the limits on the workload of the court and the tribunal concerned, changes in economic indicators and views of the stakeholders, the Judiciary proposed increasing the general financial limit of the civil jurisdiction of DC from \$1 million to \$3 million. As regards the limit for proceedings involving recovery of land or relating to the title to an interest in land, the Judiciary proposed increasing it from \$240,000 to \$320,000 in terms of the annual rent, rateable value or annual value of the land.

For the equity jurisdiction of DC, the Judiciary proposed increasing the limit from \$1 million to \$3 million where the proceedings do not involve land, and from \$3 million to \$7 million where the proceedings involve land. Besides, the Judiciary proposed increasing the civil jurisdictional limit of SCT from \$50,000 to \$75,000.

The Judiciary considered that the proposals above would allow better distribution of cases among the Court of First Instance (CFI), DC and SCT. They would help ease the pressure of the increasing caseload of civil cases on CFI, and enable it to concentrate on handling cases of higher claim amounts and greater complexity in nature. In addition, the proposals would also help lower legal costs, thereby enhancing access to justice for the public. The Judiciary has consulted the Hong Kong Bar Association, the Law Society of Hong Kong and the Panel on Administration of Justice and Legal Services of the Legislative Council (LegCo) on the above proposals, and

obtained their general support.

To cope with the increase in caseload at DC and SCT after the adjustments of the civil jurisdictional limits, the Judiciary, having carefully assessed the resource requirements, has made available additional court facilities at the court and the tribunal. The Government has also provided the Judiciary with the financial resources for meeting in full the manpower needs. In particular, the Judiciary's proposal for the creation of new Judge and Judicial Officer posts was approved by the LegCo Finance Committee in December last year. The Judiciary will endeavour to ensure smooth operation of DC and SCT, and continue to provide reliable services to court users after the adjustments of the jurisdictional limits.

This proposed resolution, together with another resolution concerning the increase of the jurisdictional limit of SCT, have been scrutinised by the Subcommittee on Proposed Resolutions under the District Court Ordinance and the Small Claims Tribunal Ordinance (Subcommittee). The Subcommittee held two meetings and supported the Government for moving motions to seek LegCo's endorsement of the two resolutions.

President, during the Subcommittee's scrutiny of the proposed resolutions, LegCo passed the Statute Law (Miscellaneous Provision) Bill 2017, thereby enabling the civil jurisdictional limit of DC for costs-only proceedings to be amended by way of resolution of LegCo as well. We therefore proposed and obtained the Subcommittee's support to include the amendment to the jurisdictional limit of DC for costs-only proceedings in the proposed resolution now placed before Members for approval. I would like to take this opportunity to thank Hon Holden Chow, Chairman of the Subcommittee, and other Members of the Subcommittee for their views and support of the proposed increase of the jurisdictional limits of DC and SCT.

Regarding Hon James To's motion to revise the jurisdictional limit of SCT to \$100,000, as we and the Judiciary explained to the Subcommittee during the scrutiny of the resolution, the current proposal of increasing the jurisdictional limit of SCT to \$75,000 was made after conducting a comprehensive and objective analysis taking into account a host of factors, including the need to enhance access to justice, effect on demand for and operation of SCT's services, changes in economic indicators, etc., as well as the views received during consultation. The proposal had also received general support from stakeholders, including the Hong Kong Bar Association, the Law Society of Hong Kong, as well as the LegCo Panel on Administration of Justice and Legal Services.

I wish to point out in particular that on the basis of the current proposal, the Judiciary had secured additional financial and manpower resources and accommodation, and arranged training for additional staff with a view to enabling SCT to handle the impact arising from the jurisdictional rise. In particular, the proposal of creating additional judicial posts which was approved by the LegCo Finance Committee in December last year was also based on the revised jurisdictional limit of SCT of \$75,000.



Upon careful consideration, the Judiciary considered it inappropriate to adjust the jurisdictional limit of SCT without going through detailed analysis and comprehensive consultation. Any changes would have an impact on the operation of SCT, and therefore should only be implemented after going through a fresh round of detailed and objective analysis and comprehensive consultation. However, this would take time, and would inevitably delay the implementation of the jurisdictional rise of SCT, and would not be conducive to the public in terms of enhancing access to justice through SCT, nor in the interest of the community as a whole.

After considering the explanation of the Government and the Judiciary, the Subcommittee supported the proposal of raising the jurisdictional limit of SCT to \$75,000.

I invite Members to support this motion to increase the civil jurisdictional limits of DC. Later on, I will move another motion to increase the civil jurisdictional limit of SCT. I invite Members to support the motion proposed by the Government and vote down the amending motion proposed by Hon James To, with a view to implementing the increase of the jurisdictional limit of SCT from \$50,000 to \$75,000 as soon as possible. The Judiciary has pledged to closely monitor the statistics on the caseload of SCT and the actual operational impact for two years upon the implementation of the new jurisdictional limit of SCT of \$75,000, and conduct a review to see if there is a case for further raising the jurisdictional limit of SCT.

Upon the passage of the motions, the Judiciary will make consequential amendments to the Small Claims Tribunal (Fees) Rules (Cap. 338B) and table them at LegCo for scrutiny separately. Subject to the completion of the legislative process, the revised civil jurisdictional limits of DC and SCT, together with the consequential amendments, are expected to come into effect in the second half of 2018 on a date to be appointed by the Chief Justice.

Thank you, President.