

Transcript of remarks by STH

Following is the transcript of remarks by the Secretary for Transport and Housing, Mr Frank Chan Fan, at a media session after attending the Legislative Council meeting today (June 20):

Reporter: Is the Government going to report the two new incidents to the Police like they did for the incident in Hung Hom? Also, do you think the MTRC management should bear some responsibility over the recent scandals instead of disciplining the lower ranking staff?

Secretary for Transport and Housing: In respect of those incidents arising from the Exhibition (Centre) Station and To Kwa Wan Station, if there is any suspected criminal act, then we will certainly report to the law enforcement agency to follow up. This is for sure. In respect of the responsibility of the MTRC (MTR Corporation Limited), I do think that they do have a duty of care to ensure all projects are being carried out in a professional and safe manner. With due respect, I'd expect them to exercise their due diligence to ensure safety and quality of the works under their supervision and management.

(Please also refer to the Chinese portion of the transcript.)

Red flags hoisted at Upper Cheung Sha Beach and Lower Cheung Sha Beach

Attention TV/radio announcers:

Please broadcast the following as soon as possible:

Here is an item of interest to swimmers.

The Leisure and Cultural Services Department announced today (June 20) that due to big waves, red flags have been hoisted at Upper Cheung Sha Beach and Lower Cheung Sha Beach in Islands District. Beach-goers are advised not to swim at these beaches.

LCQ1: Construction works for Hung Hom Station platform under Shatin to Central Link

Following is a question by the Hon Tony Tse and a reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (June 20):

Question:

Following press reports last month that the Hung Hom Station extension works of the Shatin to Central Link (SCL) project had works quality problem, the MTR Corporation Limited (MTRCL) admitted that its staff members had detected, on five occasions during their inspections between August and December 2015, non-compliant works, which included steel bars having been cut short and not screwed into couplers to the required depth. In this connection, will the Government inform this Council:

(1) as the aforesaid works quality problem was detected on as many as five occasions within five months, whether it knows why MTRCL still maintained that its frontline staff members were not required to notify its Board of Directors and the Government of such problems on the grounds that they were not "persistent";

(2) as the Government undertook in 2015, in response to an expert panel's report on the works delays and cost overruns of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link project, that it would improve the monitoring and reporting work of railway projects, of the details of the monitoring and reporting mechanism; whether the Government has deployed staff to conduct regular inspections on the SCL project and perform random checks at the "hold points"; if so, of the reasons why the aforesaid works quality problem still occurred; if not, the reasons for that; and

(3) apart from holding MTRCL accountable for the aforesaid works quality problem, whether the Government will also pursue the responsibilities of the main contractor and its sub-contractors concerned, and impose penalties on them?

President,

My consolidated reply to the various parts of the Hon Tony Tse's question is as follows:

We are very concerned about the reported incident of the cutting of steel reinforcement bars at the platform of Hung Hom Station under the Shatin to Central Link (SCL) project. We received the report submitted by the MTR Corporation Limited (MTRCL) on June 15. The report states that the statements

given by one of the sub-contractors of Leighton Contractors (Asia) Limited (Leighton) are not consistent with those given to the MTRCL by Leighton, who has strenuously denied the allegations. The MTRCL did not express any opinion on this matter. According to the information provided by the MTRCL separately to the HyD, the HyD considers that the matter may involve criminality and the HyD has therefore referred the matter to the Police for follow-up action. The Government has no comment on this matter at this stage. As regards other contents and technical information in the report, the HyD will thoroughly examine and request the MTRCL to make clarifications or provide supplementary information if necessary.

The HyD has already required the MTRCL to employ an independent third-party expert to carry out load tests. At the same time, the Chief Executive announced on June 12 the decision on the setting up of a Commission of Inquiry under the "Commission of Inquiry Ordinance" (Cap. 86), to conduct an independent and comprehensive investigation, in order to allay the concerns of the public.

The report submitted by the MTRCL on June 15 does not elaborate the rationale for not reporting to its board and the Government when the frontline staff of the MTRCL discovered the problem in quality of the works. The HyD has reminded the MTRCL that, being the project manager of the SCL project, the MTRCL has to strictly comply with the responsibility under the Entrustment Agreement, including verification of the facts of all related issues, and ensure the quality of works of the SCL.

The MTRCL was entrusted by the government to design, construction and commissioning of the SCL project. According to the Entrustment Agreement signed between the MTRCL and the Government, the MTRCL warrants that the Entrustment Activities shall be carried out with the skill and care reasonably to be expected of a professional, including the assurance of quality of works up to the standards required. The HyD, with the assistance of its Monitoring and Verification (M&V) Consultant, is responsible for verifying whether the MTRCL has complied with its responsibility as the project manager under the Entrustment Agreement. The HyD and the M&V Consultant visit the sites of SCL regularly. In general, about six to eight works contracts are visited in a month and the works contract of Hung Hom Station is visited about once in every three months. However, as the above monitoring and verification role that HyD is assuming is to check the checker, that is, verifying whether the MTRCL has implemented the relevant procedures according to its specified requirements; the HyD generally does not check at the "hold point" on site and the MTRCL is responsible for such checking.

On structural safety, depending on whether the project is located within unleased land or leased land, the design and construction of the SCL project is governed by different mechanisms. Regardless of the type of mechanism, structural safety requirements of the project also have to be on par with the requirements of works supervision under the Buildings Ordinance (Cap. 123).

Tapping the experiences learnt from the incident of the XRL project, the

HyD has implemented the following measures since mid-2014 progressively to strengthen the monitoring of expenditure, financial position and progress of the SCL project:

- (i) deployed additional staff since mid-2014 of the SCL project team of the Railways Development Office of the HyD to strengthen monitoring works;
- (ii) submitted monthly progress reports of the SCL project to the Transport and Housing Bureau and adopted a "traffic signal" system to express precisely and concisely the progress and the financial status of the project;
- (iii) the MTRCL should give a briefing on the change in financial reserve under the works contract, particularly where substantial sum is involved. The MTRCL shall brief the Deputy Director or above of the HyD for changes involving large sums;
- (iv) arranged the M&V consultant appointed by the HyD to attend monthly Project Steering Committee meetings under the chairmanship of the Director of Highways; and
- (v) established a working group with the HyD, the M&V consultant and the MTRCL to review regularly the programme and progress of the SCL in detail, with focus on critical works procedures.

Since June 2014, the Government and the MTRCL have submitted quarterly reports on the works progress to the Subcommittee on Matters relating to Railways (RSC) of the Legislative Council, and attended the RSC meetings in response to queries from the members.

The SCL project is still in progress. When the project is completed, the MTRCL shall submit the required documents and the completion report (including the test report and inspection records) to the Government for examination and confirmation. In addition, the HyD, in collaboration with the M&V consultant and relevant government departments, participates the pre-handing over inspection of the MTRCL before the relevant works are handed over to the Government.

The expansion works of Hung Hom Station under the SCL project is carried out under Works Contract No. 1112 signed by the MTRCL and Leighton. In accordance with the Entrustment Agreement, the MTRCL is required to ensure that the contractors and subcontractors employed are of a level of qualification which is consistent with those required by the MTRCL for implementing ordinary railway projects. The MTRCL, as the project manager, shall ensure all the design requirements are reflected in the works contracts signed with the contractors and sub-contractors in order to ensure the quality of works comply with the requirements of the Entrustment Agreement and the works carried out by the contractors and subcontractors are in compliance with the standards during construction.

In addition, if any serious violation involving safety and quality is found, the Building Department may consider taking legal or disciplinary actions against the relevant persons according to the Building Ordinance.

LCQ17: Surrender of fugitive offenders agreements

Following is a question by the Hon Kenneth Leung and a written reply by the Acting Secretary for Security, Mr Sonny Au, in the Legislative Council today (June 20):

Question:

The Government of the Hong Kong Special Administrative Region (SAR) has so far signed agreements with 20 jurisdictions on the surrender of fugitive offenders (SFO). On matters relating to SFO, will the Government inform this Council:

(1) of the respective numbers of SFO requests made pursuant to the relevant agreements which were received, accepted and rejected by the Government in each of the past 10 years; whether it consulted the Central Government in respect of any of such requests; if so, of the number of requests involved and the consultation details, and set out such information one by one by the jurisdictions concerned;

(2) of the number of SFO requests made by the Government pursuant to the relevant agreements in each of the past 10 years and, among them, the respective numbers of requests accepted and rejected; whether it consulted the Central Government before making any of such requests; if so, of the number of requests involved and the consultation details, and set out such information one by one by the jurisdictions concerned; and

(3) as the Department of State of the United States (US) stated in the Hong Kong Policy Act Report submitted to the Congress last month that the Chief Executive of SAR had rejected in October last year "at the behest of the Central Government" an SFO request made by the US Government, of the reasons of the SAR Government for rejecting the request; whether the SAR Government had consulted the Central Government upon receipt of the request; if so, of the reasons and the legal basis for that; whether the person requested to be surrendered has been arrested, detained and deported from Hong Kong by the SAR Government; if so, of the details?

Reply:

President,

The Hong Kong Special Administrative Region (HKSAR) Government has been actively taking forward co-operation with other jurisdictions on surrender of fugitive offenders (SFO) and mutual legal assistance in criminal matters (MLA). The juridical assistance network has been expanded through signing

relevant agreements with more jurisdictions, with a view to combating crimes and upholding the law. According to Article 96 of the Basic Law, "[w]ith the assistance or authorisation of the Central People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance". As far, Hong Kong has signed SFO agreements with 20 jurisdictions (Note 1) and MLA agreements with 32 jurisdictions (Note 2).

Having consolidated inputs from the Department of Justice (DoJ), my reply to the Hon Kenneth Leung's question is as follows:

(1) and (2) In the past 10 years, Hong Kong, pursuant to its signed SFO agreements with other jurisdictions, made 24 SFO requests to other jurisdictions; while other jurisdictions, pursuant to their signed SFO agreements with Hong Kong, made 66 SFO requests to Hong Kong. Pursuant to these requests, other jurisdictions surrendered 11 persons to Hong Kong and refused four requests from Hong Kong; while Hong Kong surrendered 23 persons to other jurisdictions and refused five requests from other jurisdictions. For the remaining requests, some are being processed, some cannot be implemented due to failure in locating fugitive offenders or other reasons, and some have been withdrawn due to arrest of the fugitive offenders in another place or the requesting place, or because of other reasons.

(3) All SFO requests are processed in strict accordance with the Fugitive Offenders Ordinance (FOO) (Chapter 503 of the Laws of Hong Kong) and pursuant to the agreements signed between Hong Kong and the relevant jurisdictions. Regarding SFO requests made by the Government of the United States, the Agreement between the Government of Hong Kong and the Government of the United States of America for the Surrender of Fugitive Offenders has stipulated clearly the circumstances under which surrender requests may be refused. The relevant provisions are extracted at Annex. It is inappropriate to discuss individual surrender cases in public or disclose the information involved. As regards the movement of persons in and out of Hong Kong, they have all along been dealt with by the HKSAR Government in accordance with the laws of Hong Kong.

Under section 6 of the FOO, on receipt of a surrender request from another jurisdiction by the HKSAR Government, the Chief Executive (CE) must first issue an authority to proceed before the request can be processed further. The decision on whether to issue an authority to proceed rests entirely with the CE, who would consult the DoJ in making such a decision. For the purpose of complying with the FOO and the applicable bilateral agreement, the CE would only make a decision after taking into full account the relevant facts and circumstances of each case. It is also stipulated in section 24 of the FOO that the HKSAR Government is required to give notice to the Central People's Government in relation to surrender requests received and made by Hong Kong.

Note 1: Australia, Canada, Czech, France, Finland, Germany, India, Indonesia, Ireland, Malaysia, the Netherlands, New Zealand, the Philippines, Portugal, the Republic of Korea, Singapore, South Africa, Sri Lanka, the United Kingdom

and the United States.

Note 2: Argentina, Australia, Belgium, Canada, Czech, Denmark, France, Finland, Germany, India, Indonesia, Ireland, Israel, Italy, Japan, Malaysia, Mongolia, the Netherlands, New Zealand, the Philippines, Poland, Portugal, the Republic of Korea, Singapore, Sri Lanka, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States and Ukraine.

LCQ7: Claim for Disabled Dependant Allowance

Following is a question by the Hon Shiu Ka-chun and a written reply by the Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (June 20):

Question:

At present, an applicant may not concurrently receive more than one of the various allowances (including Old Age Allowance (OAA), Disability Allowance (DA) and Old Age Living Allowance (OALA)) under the Social Security Allowance Scheme. As such, the Social Welfare Department (SWD) will not arrange medical assessment for those elderly persons who are receiving OALA to ascertain if they are eligible for DA. On the other hand, where a taxpayer claims Disabled Dependant Allowance (the tax allowance) for maintaining a dependent who is not a DA recipient, the Inland Revenue Department (IRD) may demand the taxpayer to submit a Medical Assessment Report issued by the Director of Health or the Chief Executive of the Hospital Authority (medical authorities), certifying that the dependent's disabling condition meets the eligibility requirements for DA in the relevant year of assessment. In this connection, will the Government inform this Council:

(1) of the maximum number of years that may be covered by the aforesaid Medical Assessment Reports issued by the medical authorities based on medical records; whether IRD will refuse a claim for the tax allowance on the grounds that a taxpayer has failed to provide a Medical Assessment Report covering the relevant year of assessment; whether the authorities will review the arrangements for claiming the tax allowance;

(2) whether at present, persons with disabilities may request, on their own and without being arranged by SWD, the medical authorities to issue the above Medical Assessment Reports; if so, of the details; if not, the reasons for that; and

(3) given that elderly persons with disabilities in general have more financial needs than those who are old but without disabilities or those who

are not old but with disabilities, whether the authorities will consider afresh disbursing both DA and OAA to elderly persons with disabilities?

Reply:

President,

In consultation with the Labour and Welfare Bureau and the Food and Health Bureau, my reply to the Hon Shiu's question is as follows:

At present, a taxpayer can claim the Disabled Dependant Allowance (DDA) if he/she maintains a dependant who is eligible to claim an allowance under the Government's Disability Allowance Scheme in any year of assessment. The Inland Revenue Department (IRD) will process the claim for DDA by the taxpayer in respect of the eligible dependant even if the dependant who is eligible for the Disability Allowance (DA) does not claim such an allowance or has opted for the Old Age Living Allowance (OALA).

Taxpayers need not submit any proof when claiming the DDA. The IRD may require individual taxpayers to submit evidence of the dependant's eligibility for the DA in reviewing the applications. If the dependant has applied to the Social Welfare Department (SWD) for the DA, the taxpayer can provide the file number of the dependant's application as proof. If the dependant has not claimed an allowance under the Government's Disability Allowance Scheme (including those eligible for the DA but have opted for the OALA), the IRD will send a review letter to the taxpayer and request the taxpayer to submit a medical assessment issued by a registered medical practitioner certifying that the disability condition is assessed in accordance with the definition of such a condition under the Comprehensive Social Security Assistance (CSSA) Scheme or the Social Security Allowance Scheme, so as to substantiate that the disability condition of the dependant warrants the DA in the relevant year. To facilitate the taxpayer to submit a proper Medical Assessment Report to substantiate the DDA claim, the IRD will send a medical assessment form issued by the SWD for the purpose of assessing the DA application together with the review letter. The taxpayer is not required to request the SWD to arrange for his/her dependant to convert to DA or issue the medical assessment form afresh. The medical assessment form completed and signed by the registered medical practitioner can already satisfy the IRD's requirement as evidence for the purpose of claiming the DDA.

For questions (1) and (2), the IRD must ensure that the deduction of the DDA complies with section 31A of the Inland Revenue Ordinance. If a taxpayer fails to provide a Medical Assessment Report covering the year of assessment concerned in respect of the dependant during the review, the IRD cannot accept the claim for DDA in respect of the dependant in that year of assessment. Based on the IRD's past experience, taxpayers were in general able to provide the required Medical Assessment Reports during the review of DDA claims. In fact, the Medical Assessment Reports for review cases are acceptable by the IRD so long as the Reports can indicate that the year of assessment concerned is covered by the disability duration. While the

existing review procedures are operating smoothly, the IRD will review the arrangements with relevant bureaux and departments when necessary.

For question (3), DA and Old Age Allowance (OAA) under the Social Security Allowance Scheme are non-contributory and non-means-tested. These two schemes are addressing the special needs of the respective target groups of beneficiaries, and a person should not receive both allowances concurrently. For instance, persons with severe disabilities, regardless of age, generally require more assistance and care from others when compared to elderly persons without disabilities, and hence the rate of DA (monthly payments of Normal DA and Higher DA are \$1,720 and \$3,440 respectively) is higher than that of OAA (\$1,345 per month). Moreover, this arrangement is in line with the "no double benefits" rule, which ensures the sustainability of the social security system. The Government has no plan to change this rule.

Elderly persons with disabilities who have financial needs may consider applying for the means-tested OALA (monthly payments of Normal OALA and Higher OALA are \$2,600 and \$3,485 respectively) or the CSSA Scheme having regard to their circumstances and wishes. At present, the average CSSA monthly payment for an elderly singleton is \$6,394. In general, elderly persons with disabilities are provided with higher payment rates than able-bodied elderly persons.