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9 April 2019

Ms Shirley Chan  
Clerk to Panel on Economic Development  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Chan,

**Panel on Economic Development**  
**Letter from Hon Jeremy TAM dated 12 March 2019**

Thank you for your letter of 15 March 2019, relaying to us the letter from Hon Jeremy TAM dated 12 March 2019 to the Chairman of the Legislative Council Panel on Economic Development. Regarding the questions raised by Hon TAM on the Direct Investigation Report by the Office of the Ombudsman on Marine Department's Arrangements for Private Vessel Moorings ("the Report") published on 12 March 2019, our responses are set out below.

**Mooring arrangement of local vessels**

To protect the safety of vessels and those on board, the Government will ensure that there are adequate suitable places (collectively known as "sheltered spaces") in Hong Kong waters for local vessels to berth and take refuge during the passage of typhoons and in inclement weather. According to the latest assessment of the Marine Department ("MD") completed in mid-2017, the overall supply of sheltered spaces in Hong Kong would be sufficient to meet the overall demand of local vessels up to 2030. Under normal weather conditions, a

local vessel may berth at any safe and suitable locations in Hong Kong waters (except for those waters specifically prohibited to be used for berthing purposes) according to its daily operational needs. MD's approval or allocation of specific berthing spaces is not required.

Moreover, individual shipowners and marinas may also apply for written permission from MD to lay private moorings ("PMs") at their own expense within the areas designated for PMs ("PM Areas"). PMs, which are fully privately-owned, are purchased, laid and maintained by the shipowners and marinas concerned. It should however be noted that the laying of PMs is nothing more than the personal preference and choice of shipowners, and **not a necessity for the berthing of vessels**. In fact, most local vessels do not use PMs when berthed, while those who do are mainly pleasure vessels.

### **The turnover and demand-supply issues of PMs**

As pointed out in paragraph 7.2 of the Report, given that the Hong Kong waters do not cover a large area, the Government uses the overall demand for sheltered spaces in Hong Kong waters as the basis when assessing the demand and supply of sheltered spaces in Hong Kong (where the measuring unit is the area of waters) and will not increase the provision of sheltered spaces in a certain location due to regional demand. The Office of the Ombudsman agreed to our policy, and concurred that the Government had no obligation to satisfy the demand, in particular the regional demand, of all applicants for spaces to lay PMs.

At present, MD has designated 43 PM Areas within Hong Kong waters. To protect vessels from the effects of inclement weather, PM Areas must be established in sheltered waters where the sea is relatively calm (such as within typhoon shelters). Such waters are limited in size and play an important role in the berthing of different types of vessels (e.g. working vessels, passenger vessels, etc.) in inclement weather. Therefore, when considering the establishment of PM Areas, MD will have to strike a balance between the demand for sheltered waters by pleasure vessels and that by other local vessels. As at 30 June 2018, there were 504 applications for laying PMs. The waiting times of the respective PM Areas are detailed at **Annex**. Since 2008, the Government has not received any request for assistance in relation to the waiting time from applicants for spaces to lay PMs.

To allow better use of all sheltered spaces, the Government has taken forward various measures since 2017 to increase the supply of spaces for laying PMs, including establishing additional PM Areas in the underutilised Hei Ling Chau Typhoon Shelter, and expanding the PM Areas in some districts. The aforesaid measures are expected to provide additional spaces for the laying of over 1 000 PMs (vis-à-vis a total of about 2 000 PMs before the implementation of these measures) and will therefore considerably increase the overall supply of spaces for the laying of PMs.

### **Validity period of permissions to lay PMs**

The majority of PM spaces were approved by MD between 1980 and 1990, and their written permissions have no validity periods specified. To enhance the regulation of PMs, MD has specified in the written permissions for laying PMs granted on or after 21 February 2018 a validity period of three years, as well as introduced a “points system”. If the owner of a PM is found to have contravened the conditions stipulated in a newly issued written permission, MD will, depending on the severity of non-compliance, allocate a certain number of points to the person concerned. If the owner of a PM accumulates the maximum number of points allowed in the system within the three-year validity period, MD will revoke his written permission. In accordance with our legal advice, the three-year validity period and the “points system” could only apply to permissions granted on or after 21 February 2018.

### **The condition on “Designated Vessel”**

Regarding the requirement in the written permissions that a PM shall not be sublet or lent for use by other vessels as mentioned in Hon TAM’s letter, the Government has sought legal advice on multiple occasions on the matter since 2013. The legal advice has pointed out that the existing legislation expressly allows vessels other than that belonging to the owner to use the PM with the permission of the owner concerned. In other words, the law **does not** prohibit an owner from subletting or lending his PM to others. The previous administrative requirement for PMs to be used only by the vessel specified on the application (“Designated Vessel”) was *ultra vires* and must be rectified. Furthermore, the relevant legislation has also stipulated the procedures for a PM owner to sell or transfer his PM. The previous administrative arrangement of MD in prohibiting the transfer of PMs was thus not in

compliance with the relevant legislation. Based on the aforesaid legal advice, MD has removed the condition of allowing a PM to be used only by the Designated Vessel in the written permissions granted after December 2017. For safety reasons, each written permission has specified the permissible length and width of the vessel for using the PM.

### **Administration Fee for laying PMs**

As for the administration fee for laying PMs, paragraphs 2.17 to 2.23 in the Report have described in detail MD's mechanism of adjusting the fee. MD has all along adopted the cost-recovery principle in accordance with the Shipping and Port Control Ordinance (Cap. 313) to recover the administrative costs in granting permissions for the laying of PMs. Since 1992, MD has adjusted the administration fee on three occasions, namely in 1993, 1994 and 1995, in accordance with the Government's established fee review mechanism. Between 1998 and 2004, various fee items of the Government (including the administration fee for PMs) were frozen. From 2005 onwards, MD resumed its annual review of the relevant fee items according to the Government's established mechanism. Under the principle of cost-recovery, MD examines periodically the expenditure incurred from work areas such as port control and regulation of vessel traffic. The reviews so far have not suggested a need to adjust the relevant fee item. As such, MD has not adjusted the administration fee for laying PMs since 1995.

### **Management of typhoon shelters**

With regard to the management of typhoon shelters, paragraph 7.49 of the Report stated that the provision of services by some vessels inside the typhoon shelters has not deprived others of their rights to berth. Paragraphs 5.22 and 7.50 of the Report further mentioned that the Hong Kong Police Force ("HKPF") together with MD have stepped up efforts in patrolling in the Kwun Tong Typhoon Shelter and conducted a total of five joint operations to curb any illegal activities within typhoon shelters. MD will continue to maintain close liaison with HKPF as well as undertake patrols and operations as appropriate, so as to ensure the safe and orderly berthing of vessels within typhoon shelters.

The Transport and Housing Bureau together with MD are currently undertaking an internal review on the policy and legislative provisions related to PMs. We will consider in the internal review the relevant recommendations of the Office of the Ombudsman with a view to enhancing the management of PMs.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Louisa Yan', with a long horizontal flourish extending to the right.

( Louisa Yan )

for the Secretary for Transport and Housing

**私人繫泊設備位置的輪候情況**  
**Waiting times and cases for PM spaces**

私人繫泊設備區 Areas for laying PMs	輪候宗數 Waiting cases	平均輪候時間 <sup>1</sup> Average waiting time <sup>1</sup>		輪候名單上的 最長輪候時間 Longest waiting time on the list	
		年 Year(s)	月 Month(s)	年 Year(s)	月 Month(s)
<b>中部 Central waters</b>					
銅鑼灣避風塘 Causeway Bay TS	62	不適用 N/A*		8	5
荃灣 Tsuen Wan	27	11	9	13	7
汀九 Ting Kau	14	-	2	11	8
土瓜灣 To Kwa Wan	1	不適用 N/A*		10	8
<b>東部 Eastern waters</b>					
白沙灣 Hebe Haven	64	14	8	14	1
船灣海 Shuen Wan Hoi	44	-	4	5	6
大美督 Tai Mei Tuk	25	-	3.5	14	2
早禾坑 Tso Wo Hang	32	8	11	10	-
斬竹灣 Tsam Chuk Wan	7	不適用 N/A*		11	10
大網仔(阿公灣) Tai Mong Tsai (A Kung Wan)	5	不適用 N/A*		8	-
<b>南部 Southern waters</b>					
香港仔南避風塘 (布廠灣) Aberdeen South TS (Po Chong Wan)	160	6	5	12	10
熨波洲 Middle Island	16	3	8	9	1
大潭港 Tai Tam Harbour	21	1	10	2	9
榕樹灣 Yung Shue Wan	2	不適用 N/A*		2	10
<b>西部 Western waters</b>					
稔樹灣 Nim Shue Wan	13	8	8	6	5
長沙欄 Cheung Sha Lan	10	1	4	5	3
屯門避風塘 Tuen Mun TS	1	不適用 N/A*		2	1
<b>總數 Total</b>	<b>504</b>				

(截至 2018 年 6 月 30 日 As at 30 June 2018)

備註：\*在 2013 年 1 月 1 日至 2018 年 6 月 30 日期間未有批出任何數設私人繫泊設備的允許。  
Note: \* No permissions to lay PMs were issued between 1 January 2013 and 30 June 2018.

Abbreviations: PM = Private mooring; TS = Typhoon shelter

<sup>1</sup> 以在 2013 年 1 月 1 日至 2018 年 6 月 30 日期間批出數設私人繫泊設備的允許計算。  
Calculation based on the permissions to lay PMs granted between 1 January 2013 and 30 June 2018.