

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 April 2007

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S.,  
S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, S.B.S., J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, G.B.S., J.P.

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, J.P.

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

DR THE HONOURABLE JOSEPH LEE KOK-LONG, J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

**MEMBERS ABSENT:**

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, S.B.S., J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE MA LIK, G.B.S., J.P.

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE RAFAEL HUI SI-YAN, G.B.S., J.P.  
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.  
THE FINANCIAL SECRETARY

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.  
THE SECRETARY FOR JUSTICE

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR HOUSING, PLANNING AND LANDS

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.  
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.  
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG, J.P.  
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

THE HONOURABLE AMBROSE LEE SIU-KWONG, I.D.S.M., J.P.  
SECRETARY FOR SECURITY

DR THE HONOURABLE YORK CHOW YAT-NGOK, S.B.S., J.P.  
SECRETARY FOR HEALTH, WELFARE AND FOOD

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.  
SECRETARY FOR THE CIVIL SERVICE

PROF LAU SIU-KAI, J.P.  
HEAD, CENTRAL POLICY UNIT

## **CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**TABLING OF PAPERS**

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Designation of Museum (Ping Shan Tang Clan Gallery cum Heritage Trail Visitors Centre) Order .....	53/2007
Lands Tribunal (Amendment) Rules 2006 (Commencement) Notice .....	54/2007
Human Reproductive Technology (Licensing) Regulation.....	55/2007
Human Reproductive Technology (Fees) Regulation .....	56/2007

**Other Papers**

- No. 81 — Report No. 48 of the Director of Audit on the results of value for money audits - March 2007
- No. 82 — Annual Report and Financial Report 2005-2006 of the Vocational Training Council
- No. 83 — Audited Statement of Accounts of and the Director of Audit's Report on the Quality Education Fund for the year ended 31 August 2006
- No. 84 — Approved Estimates of Income and Expenditure for the financial year 2007-2008, Securities and Futures Commission
- No. 85 — Audited Statement of Accounts of the Early Retirement Ex-gratia Payment Fund for Aided Primary School Teachers together with the Director of Audit's Report for the year ended 31 August 2006

- No. 86 — Audited Statement of Accounts of the Early Retirement Ex-gratia Payment Fund for Aided Secondary School Teachers together with the Director of Audit's Report for the year ended 31 August 2006
- No. 87 — Audited Statement of Accounts of the Education Development Fund together with the Director of Audit's Report for the year ended 31 August 2006

## WRITTEN ANSWERS TO QUESTIONS

### Project to Convert Former Yau Ma Tei Theatre

1. **MR TIMOTHY FOK** (in Chinese): *President, the Government is planning to convert the former Yau Ma Tei Theatre (Theatre) into a Cantonese opera centre, and the project concerned is expected to commence in 2008 for completion in 2011. In this connection, will the Government inform this Council whether:*

- (a) *it will speed up the completion of the project concerned; if not, of the reasons for that; and*
- (b) *it will invite members of the Cantonese opera sector to give their views on the scope and the scale of the project; if not, of the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President,

- (a) We are finalizing a funding proposal on the conversion of the former Theatre and the nearby Red Brick Building (Building) into a Cantonese opera centre. Subject to resource availability and approval by the Legislative Council Finance Committee, we estimate that the project covering detailed design and conversion works of the Theatre and the Building would commence in 2008 and take about three years to complete.

The project involves the adaptive re-use of two historical buildings, namely the former Theatre (a Grade II building) and the Building (a Grade I building). Since all the new alterations and additions to the Theatre and the Building for conversion into the Cantonese opera centre have to be carried out carefully in compliance with a

prescribed series of heritage conservation requirements, the project would be technically more complicated than any ordinary public works project. While we would endeavour to speed up the completion of the project, it is very unlikely that it could be completed much earlier than scheduled.

- (b) In November 2006, we sought the views of the Cantonese opera sector through the Cantonese Opera Advisory Committee (Committee) on the proposed conversion and the facilities to be included into the project. The Committee was supportive of the project. We would continue to work closely with the Committee and the sector to seek their views on the project, including its future operation.

### Operation of Octopus Cards

2. **MR TAM YIU-CHUNG** (in Chinese): *President, it has been reported that earlier, problems arose in a number of transactions relating to adding value to Octopus cards via the EPS add-value terminals. In this connection, will the Government inform this Council:*

- (a) *apart from the Code of Practice for Multi-Purpose Stored Value Card Operation (the Code) and the Code of Practice for Payment Card Scheme Operators, whether the Hong Kong Monetary Authority (HKMA) has drawn up any terms and conditions governing the debit procedures and operation of Octopus cards; if so, of the details;*
- (b) *whether it knows if the Octopus Cards Limited (OCL) has reviewed the transaction records relating to adding value to Octopus cards via the EPS add-value terminals after each upgrade of the network concerned in the past three years; if it has, of the results of the review; if not, the reasons for that; and*
- (c) *whether it plans to implement the following measures to enhance the overall safety and efficiency of the operations of Octopus cards: devising a statutory code of practice for operators of multi-purpose stored value cards, regularly conducting random checks on the transaction records of Octopus cards, as well as requiring the OCL to establish a comprehensive enquiry system on customers' transaction records; if so, of the details of the plan; if not, the reasons for that?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): President, the HKMA authorized the OCL, the issuer of the Octopus cards, as a deposit-taking company in 2000 and has been supervising it as such since then. The primary supervisory objective, in line with the policy and supervisory objective for all other authorized institutions, is to ensure the overall safety and soundness of the institution so as to protect the interests of cardholders, who are akin to depositors in the case of a deposit-taking entity. Our replies to the questions raised by Mr TAM Yiu-chung are as follows:

- (a) The supervisory framework does not have specific guidelines on the charging and add-value operations of the Octopus system. Nevertheless, the Code, which was adopted by the OCL, requires the company to have controls and procedures to ensure the safety and efficiency of its operation. Specifically, the Code requires the OCL to ensure a high degree of security, data integrity and operational reliability of its system. It also requires the OCL to have robust clearing and settlement arrangements to ensure efficient, reliable and secure operation of the system. We believe that the provisions under the Code are already adequate in requiring the OCL to put in place appropriate controls to ensure the reliability of its charging operation.

The board of directors and management of the OCL have the primary responsibility for ensuring full compliance with the Code. Under the Code, the OCL is required to conduct self-assessment on an annual basis. The HKMA will ensure that management of the OCL has put in place appropriate controls and procedures to ensure the compliance with the Code in its ongoing supervision of the OCL.

- (b) Whether the OCL needs to check all EPS add-value transactions after each EPS related system change would depend on the nature of the change. This is a judgement for the OCL's management. However, as an authorized institution, the OCL is required to have controls and procedures to ensure that the impact of any system change is properly evaluated and all system changes are adequately tested, including simulated transactions testing if necessary, before implementation. The HKMA will ensure that these controls are in place in its ongoing supervision of the OCL.

- (c) The HKMA is fully aware of the public's concerns about the reliability of the Octopus system following the recent failed EPS add-value incidents. It has requested the OCL to, as soon as practicable, take appropriate measures, particularly those suggested by Legislative Council Members and the Consumer Council, to enhance the protection of cardholders. The HKMA has also, under section 59 of the Banking Ordinance, required the OCL to commission an independent auditor to review the OCL's EPS add-value services and make recommendations on how the OCL should take account of cardholders' interests in its operations and improve its operational controls. In addition, the HKMA has appointed an Advisor under section 52 of the Banking Ordinance to advise the OCL on measures to enhance cardholders protection and safeguard their interests. The independent auditor and the Advisor will take into account all relevant suggestions made by Legislative Council Members and the Consumer Council in formulating their recommendations. The HKMA will ensure that where appropriate, the OCL will take on board these recommendations.

### **Corporate Governance**

3. **MR BERNARD CHAN** (in Chinese): *President, since the Enron case, investors' awareness and expectations of the standard of corporate governance have increasingly been raised. In this connection, will the Government inform this Council of the measures it has adopted to improve corporate governance in the past three years, and whether it has assessed the effectiveness of such measures; if so, of the assessment results?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): President, as one of the world's key international financial centres, Hong Kong has long emphasized the importance of good corporate governance to maintaining our financial stability and competitiveness. We adopt a robust and effective regulatory regime under the rule of law, with corporate governance standards being benchmarked against best prevailing market practices including those of the world's foremost financial centres. Our good progress in strengthening corporate governance was recognized by the International Monetary Fund in its Staff Report on Hong Kong released in January 2007.

On the part of the Administration and regulators in the financial services sector, we need to establish and maintain a fair, transparent and orderly market at the macro level; provide a sound institutional framework to encourage good corporate governance at the micro level; and ensure that appropriate penalties and sanctions are in place at the enforcement level for combating fraud and misconduct. Understandably, our primary concern has been — as it should be — with the standard of corporate governance in listed companies given the high degree of public interest.

The initiatives set out in the Corporate Governance Action Plan, which the Administration introduced to the Panel on Financial Affairs of this Council in January 2003, and which was drawn up collectively by the Administration, Securities and Futures Commission (SFC) and Hong Kong Exchanges and Clearing Limited (HKEx), have begun to bear fruit gradually in the past few years:

- (i) We have effectively rolled out the Securities and Futures Ordinance (Cap. 571) in April 2003, modernizing the regulatory regime for listed companies and the securities and futures markets, and providing for effective enforcement against market misconduct;
- (ii) With the commencement of the relevant sections of the Companies (Amendment) Ordinance 2004 in July 2005, we have introduced a regime providing for statutory derivative actions to enhance protection of minority shareholders' rights;
- (iii) The Listing Rules of the Stock Exchange of Hong Kong Limited were amended in 2004 to require each listed company to have a minimum of three independent non-executive directors, at least one of whom must have appropriate professional qualifications or accounting or related financial management expertise. These requirements have been effective since March 2004. A review by the HKEx in 2006 revealed that the level of compliance has reached 97% among all listed companies;
- (iv) A two-phased approach has been adopted to upgrade the regulatory system of intermediaries in initial public offerings. In the first phase, the Listing Rules amendments included a new "Practice Note on Due Diligence by Sponsors in respect of Initial Listing Applications" which was put in place by the HKEx in January 2005. The second phase was completed in January 2007 when the SFC's revised sponsor licensing regime became effective;

- (v) The Code on Corporate Governance Practices was promulgated by the HKEx in January 2005. Notably, every newly-appointed director should receive a comprehensive, formal and tailored induction on the first occasion of his appointment, and subsequently such professional training as is necessary, to ensure that the director has a proper understanding of the operations of the listed company and that he is fully aware of his legal and regulatory responsibilities as well as the governance policies of the company concerned. Listed companies have to explain in their corporate governance reports any deviations from the provisions of the Code. According to a review published by the HKEx in March 2007, all the 621 issuers covered by the review had met the requirement to comply or explain, and nearly 90% of these issuers had complied with at least 41 of the 44 Code provisions; and
- (vi) We are also working on a Securities and Futures (Amendment) Bill to give statutory backing to major listing requirements, so that civil or criminal sanctions might be imposed on listed companies as well as their directors and officers for breaches of the proposed statutory listing requirements.

The collapse of Enron may be regarded as a turning point in corporate governance reforms, not only locally but also globally. The Professional Accountants Ordinance (Cap. 50) was amended in 2004 to enhance independence of, and lay participation in, the regulatory function of the Hong Kong Institute of Certified Public Accountants (HKICPA). Moreover, with the contribution of the HKICPA, Hong Kong became the first jurisdiction in the Asia-Pacific Region to achieve full convergence with International Financial Reporting Standards and the best international practice in the areas of auditing and accounting ethics. Another important initiative launched by the Administration is the establishment of the Financial Reporting Council (FRC). The FRC is a new statutory body empowered to investigate accounting and auditing irregularities of companies and collective investment schemes listed in Hong Kong. The FRC is now pushing ahead with the preparatory work for building an effective organization, with a view to enabling it to be fully operational in mid-2007.

Other regulatory reforms in the pipeline include the rewrite of the Companies Ordinance (Cap. 32) since mid-2006. Among other things, the rewrite exercise will review and further strengthen Hong Kong's existing corporate governance framework, with a view to providing Hong Kong with a modernized legal infrastructure attuned to its needs in the 21st century as a major international business and financial centre. On 29 March 2007, we launched

the first topical public consultation to improve the accounting and auditing provisions of the Ordinance, aiming at, among other things, improving disclosure and transparency of the information included in corporate annual reports.

Corporate governance must be driven by a strong culture of transparency and responsibility, and through the example of corporate leaders themselves. Hong Kong is blessed with a strong civil society with deep roots underpinned by a large number of professional bodies and related institutions. These bodies and institutions include, for examples, the HKICPA, the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors, and so on. They are the Administration's partners in promoting good corporate governance practices at the corporate level. Through providing proper training, they cultivate understanding of corporate governance and the responsibilities of different stakeholders; through organizing various awards and competitions, they give directors and relevant professionals the sort of peer recognition and incentive to excel continuously; and through sponsoring promotion, they enhance the awareness of the importance of corporate governance among the investing public.

The Administration believes that good corporate governance will continue to be a critical factor in maintaining our competitive edge among other financial markets in future. Over the past three years, our market capitalization has increased by 135% to reach \$13,551 billion, with 1 180 companies listed as at end March 2007. The Global Financial Centres Index, published by the City of London last month, placed Hong Kong third worldwide in terms of financial centre competitiveness, and saw Hong Kong as a genuine global financial heavyweight in the years ahead. However, there is no room for complacency. The Administration, together with all relevant stakeholders, will continue to make every effort to further improve our regulatory regime taking into account the developments in the international arena.

### **Recycling Facilities for Compact Fluorescent Lamps**

4. **MR LEUNG YIU-CHUNG** (in Chinese): *President, the Government will present a bill to this Council today, in order to implement a mandatory energy efficiency labelling scheme, and the products to be included in the initial phase will cover compact fluorescent lamps (CFLs). However, CFLs contain toxic heavy metals such as mercury which, if improperly treated when disposed of, may cause harm to the environment. Although the Environmental Protection Department (EPD) has provided facilities in the Chemical Waste Treatment*

*Centre (CWTC) for recycling mercury in street lamps, fluorescent tubes and CFLs, these facilities are only available to government departments, public bodies and commercial organizations. Such lighting fittings disposed of by members of the public may not receive proper treatment. In this connection, will the Government inform this Council:*

- (a) of the number of organizations currently using the above recycling facilities in the CWTC;*
- (b) whether it has set a target on the number of organizations using the above facilities; if it has, of the details;*
- (c) of the commercial organizations with which it is liaising on using the above recycling facilities, and how it will further promote the facilities; and*
- (d) whether it will establish a territory-wide recycling scheme in order to treat the above lighting fittings disposed of by members of the public, thereby alleviating the harmful effects on the environment; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**  
(in Chinese): President,

- (a) There are facilities in the CWTC for treating waste fluorescent tubes and light bulbs and recovering their mercury content. At present, the major service users are government departments, including all departments which produce a large number of waste fluorescent tubes and light bulbs, such as the Electrical and Mechanical Services Department, the Highways Department, the Housing Department and the Drainage Services Department. The Customs and Excise Department also send such forfeited items to the facilities for disposal.

In addition to the above government departments, 19 other organizations used the facilities in 2006. Throughout the year, the facilities treated a total of about 435 000 waste fluorescent tubes and light bulbs with mercury content, among them 98 000 came from the above organizations. At present, the facilities have the capacity to treat about 850 000 waste fluorescent tubes and light bulbs with mercury content per annum.

- (b) Although the facilities mainly provide services to government departments at present, they are in fact also open to organizations and public members for voluntary use, provided that they will not operate beyond their capacity. Organizations and public members using the facilities have to arrange for collection and storage of waste fluorescent tubes and light bulbs on their own, deliver them in bulk to the CWTC and pay a disposal fee of \$1,027 per tonne.
- (c) The facilities provide services to any organization and public member who are major producers of waste fluorescent tubes and light bulbs, such as public transport companies, tertiary education institutes, the airport, hotels, shopping malls, public and private residential developments. Organizations and public members using the facilities have to collect and store the waste by themselves, comply with the relevant legislation and pay the disposal fee. With the implementation of the mandatory energy efficiency labelling scheme and the increase in public awareness of and support for energy saving, we believe that CFLs will be more widely used. The EPD will step up publicity with a view to attracting more people to use the facilities voluntarily.
- (d) To tie in with the mandatory energy efficiency labelling scheme, the EPD will make efforts to encourage organizations and public members which are major producers of waste fluorescent tubes and light bulbs with mercury content to use the facilities voluntarily and will review the progress of this voluntary programme. After the passage and implementation of the Product Eco-responsibility Bill, we will examine if the producer responsibility scheme needs to be further enforced for different types of products, such as CFLs.

### **Setting up of Government Records Office**

5. **MR LEE WING-TAT** (in Chinese): *President, will the Government inform this Council:*

- (a) *of the number of requests from members of the public for accessing government records or archival records in the past three years, as well as the number of such requests rejected;*
- (b) *whether there is any stipulation on the minimum retention period for government records; if so, of the length of that period;*

- (c) *whether there is any stipulation that confidential documents of the Government (including those of the Executive Council) shall be made available for public inspection after being sealed and stored up for a certain number of years;*
- (d) *whether the Government Records Service has ever given up records worthy of retention for reason of space limitation when it considers whether to retain government records or archival records; and*
- (e) *whether it has considered setting up a large government records office at the site of the Central Government Offices upon the relocation of government departments there, for storing more records for public inspection?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Chinese): President,

- (a) "Archival records" generally means documents and materials preserved because of their continuing or permanent values. The number of requests from members of the public for access to archival records and the number of rejected cases in the past three years are as follows:

<i>Year</i>	<i>Archival records</i>	
	<i>No. of requests for access</i>	<i>No. of rejected cases or cases in which access to part of the records was granted*</i>
2004	711	3
2005	1 418	6
2006	1 327	9

\* Most of these cases involved records kept for less than 30 years.

In addition, the number of requests to government bureaux and departments for access to information under the Code on Access to Information and the number of rejected cases in the past three years are as follows:

<i>Year</i>	<i>Government records</i>	
	<i>No. of requests for access</i>	<i>No. of rejected cases</i>
2004	2 010	61
2005	2 294	40
2006	2 383	47

- (b) The retention and destruction of government records is determined according to practical needs, taking into account administrative, operational, financial and legal requirements, as well as the archival value of the records. Different retention periods will be drawn up for different categories of records. For example, records relating to unsuccessful applications for recruitment exercises will be retained for one year; routine records on building management three years; policy records on purchase, management and maintenance of government vehicles five years; accounting documents seven years; and records appraised to have archival value permanently.
- (c) In general, public access will be granted to archival records containing open information and those containing classified information which have been closed for 30 years. Classified archival records containing sensitive information such as those relating to defence, security and external affairs will be considered on a case-by-case basis.
- (d) and (e)

The Hong Kong Public Records Building in Kwun Tong is a purpose-built archival facility. It is constructed and equipped to meet international standards for the preservation of records that hold archival value. The public areas include a large working reference room, an exhibition hall and a search room. At present, the building has spare capacity for archival records.

The Government Records Service also operates two records centres for storing government records not in active use. The Government Records Service will make optimal use of the existing capacity of the centres and it is not necessary to consider setting up a large government records office in Central.

### **Road Safety at Roundabouts**

6. **MR CHEUNG HOK-MING** (in Chinese): *President, will the Government inform this Council:*

- (a) *of the total number of roundabouts on the roads of Hong Kong and their locations;*

- (b) *of the number of traffic accidents which occurred at roundabouts in the past three years and the number of resultant casualties;*
- (c) *whether it has investigated the causes of traffic accidents at roundabouts over the past three years and introduced improvement measures; if it has, of the details; if not, the reasons for that; and*
- (d) *whether it has rolled out any publicity programmes to promote road safety at roundabouts; if it has, of the details of such programmes over the past three years and their promotional methods; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): President,

- (a) There are currently a total of 224 roundabouts on the roads in Hong Kong, with 34, 38 and 152 on Hong Kong Island, Kowloon and the New Territories respectively.
- (b) The numbers of traffic accidents at roundabouts were 154 in 2004 and 171 each in 2005 and 2006. The respective numbers of casualties involved in these accidents were 179, 228 and 234.
- (c) Traffic accidents at roundabouts are caused by different factors. The police will conduct investigations. The Transport Department (TD) will also follow up individual cases and institute appropriate improvement measures. Separately, the TD has formulated guidelines to ensure that designs of roundabouts comply with safety standards, and that adequate road markings and traffic signs are provided to give clear indications to motorists. The TD will also keep the traffic conditions at roundabouts under regular review and listen to the views of the public. If necessary and according to the circumstances of individual roundabouts, the TD will take appropriate follow-up actions, such as widening of roundabouts and installing additional traffic and directional signs, and so on, to enhance road safety.
- (d) The TD has published the Road Users' Code, which sets out in detail points to note for motorists when using roundabouts. Copies of the Code are distributed free of charge to holders of newly issued

learner's driving licences. The Code may also be downloaded from the TD's website. The Administration will continue to disseminate information on the safe use of roundabouts to motorists through various publicity channels, such as the Road Safety Bulletin and regular meetings with the transport trades.

### **Teaching with Information Technology**

7. **MR JASPER TSANG** (in Chinese): *President, in July 2004, the Education and Manpower Bureau (the Bureau) published a paper on Empowering Learning and Teaching with Information Technology, which set out seven strategic goals. In this connection, will the Government inform this Council of the latest progress and effectiveness of the various measures formulated to achieve these goals?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): President, in 1998, the Government published the "Information Technology for Learning in a New Era: Five-year Strategy 1998/99 to 2002/03" which set out the strategy to integrate information technology (IT) into learning and teaching. After reviewing the effectiveness of the Strategy and consulting the public, the Government published in July 2004 the policy document entitled "Empowering Learning and Teaching with Information Technology" which set out seven strategic goals to further embed IT into learning and teaching. The progress of the major initiatives under each of the seven goals is set out below:

#### *Goal 1: Empowering Learners with IT*

The Bureau developed in 2005 an Information Literacy framework to provide up-to-date IT learning targets for students. The framework set out the necessary IT skills that students should acquire to enable them to use IT as a tool for information retrieval, knowledge acquisition, communication, collaboration, analysis and personal development.

#### *Goal 2: Empowering Teachers with IT*

Since September 2004, the Bureau has organized 207 professional development programmes on the integration of IT into learning and teaching for teachers. The Bureau has selected four schools as Learning Centres in which teachers experienced in using IT in learning and teaching would devote their efforts in

developing innovative IT learning and teaching methods. The results will be shared with teachers in other schools.

To broaden teachers' understanding of global development of IT in education, the Bureau hosted the Hong Kong International IT in Education Conference in 2006 which featured more than 120 presentations and workshops. In late 2006, the IT in Education Partnership Incentive Scheme was launched to encourage teachers to collaborate with other organizations, including IT companies, to develop more effective pedagogical solutions of using IT to strengthen learning and teaching. Currently, a total of 20 projects are in progress and they are expected to be completed by early 2009. The Bureau will organize seminars for teachers to share the outcome of these projects.

### *Goal 3: Enhancing School Leadership for the Knowledge Age*

School leadership and effective school-based IT development plans are of paramount importance in integrating IT into learning and teaching. The Bureau has organized regular e-leadership training and symposia to assist school leaders in drawing up school-based IT development plans. Furthermore, we have published in 2005 a Self-evaluation Platform on IT in education to assist schools in conducting self-evaluation on the progress and performance of their school-based IT development plans.

The Bureau has selected 21 schools which are successful in implementing school-based IT development plans as Centres of Excellence. These Centres will share their successful experience and good practices in using IT to enhance learning and teaching with other schools.

### *Goal 4: Enhancing Digital Resources for Learning*

From 2005 to 2006, a grant of \$30 per student was disbursed under the Electronic Learning Credits Scheme to schools for acquiring digital interactive learning materials. In 2005, \$3.9 million was allocated to the Hong Kong Education City Limited to produce digital learning materials and obtain licences of quality overseas digital learning materials for use by local schools.

In 2005, the Bureau launched an incentive scheme to encourage public-private partnership in developing teaching software for teachers. The software developed with subsidy under the scheme will be made available to all schools free of charge for the first three years before their commercial launch. There are currently 22 projects under this scheme. Twelve pieces of software have been developed and the rest will be completed by February 2008.

*Goal 5: Improving IT Infrastructure and Pioneering Pedagogy Using IT*

In 2005, \$137.3 million was allocated to more than 900 schools to replace and upgrade IT infrastructure. In addition, \$6.3 million was allocated to schools for the procurement of e-learning platforms or upgrading existing systems to support e-learning platforms.

The Bureau has piloted in 10 schools the use of interactive whiteboard. This is a multimedia device that enables teachers to show interactive multimedia learning materials in classrooms to make teaching more effective and stimulate more interaction between teachers and students. There are also other pilot schemes on the pedagogical application of web conferencing and mobile technology in progress.

*Goal 6: Providing Continuous Research and Development*

The Bureau has produced an interactive e-platform designed for sharing of good practices on IT in education to facilitate research and development in this respect. More than 200 exemplars illustrating effective use of IT in learning and teaching are now available on the platform.

*Goal 7: Promoting Community-wide Support and Community Building*

To bridge the Digital Divide, the Bureau, in collaboration with the Hong Kong Council for Social Service, has launched the Computer Recycling Scheme to provide families in need with used computers, technical support, and Internet connection service free of charge. So far, more than 10 000 families have benefited from this scheme. In addition, we have partnered with the Hong Kong Computer Society to launch the ITeHelp call centre service to provide technical support to students, teachers, and school IT technical support personnel.

The Bureau has also disbursed a special non-recurrent grant on a need basis to schools for organizing programmes to help parents who are not conversant with IT to understand the proper use of IT for learning.

Tertiary institutes have been commissioned to conduct an evaluative study on the effectiveness of various initiatives under the seven goals. Phase one of the study, conducted by the Hong Kong Institute of Education, aims to collect the views of teachers, students, and parents on the adequacy of the support provided to them to use IT for learning and teaching. The report on the opinion surveys

will be uploaded onto the Bureau website by mid-2007. Phase two of the study, conducted by the University of Hong Kong, aims to assess the impact of using IT on the learning outcomes in selected areas such as Chinese, Mathematics and Science. The study will be completed by the end of 2007 and the study report will be uploaded onto the Bureau website when available.

### **Widening of Pedestrian Crossings**

8. **MR JAMES TO** (in Chinese): *President, with the incessant increase in population and the number of tourists, pedestrians and vehicles in Hong Kong sometimes have to compete for use of the road at major tourist spots and main streets, such as Nathan Road. Pedestrians waiting to cross such streets often obstruct the pavements, and some may even be forced to walk on the carriageway. In reply to my question at the Legislative Council meeting on 28 March this year, the Secretary for the Environment, Transport and Works said that, the Transport Department (TD) was finalizing various specific and detailed proposals on widening of pedestrian crossings, which included widening the pedestrian crossing at Nathan Road near Argyle Street in mid-2007. In this connection, will the Government inform this Council:*

- (a) *of the number of works the Government conducted in each of the past three years to widen the pedestrian crossings at Nathan Road, Lai Chi Kok Road, Cheung Sha Wan Road, Ma Tau Wai Road and Tokwawan Road; and*
- (b) *whether it plans to widen other pedestrian crossings along Nathan Road with high pedestrian flow; if so, of the details of the plan?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**  
(in Chinese): President,

- (a) We have not undertaken any works to widen the pedestrian crossings at Lai Chi Kok Road, Cheung Sha Wan Road, Ma Tau Wai Road and Tokwawan Road in the past three years. As for Nathan Road, we widened the two 6.5 m wide pedestrian crossings near Peking Road and changed it into a 26 m wide pedestrian crossing in 2005.
- (b) In addition to the widening of the pedestrian crossing at Nathan Road near Argyle Street which is due to commence in mid-2007, the

TD has formulated the following proposals to widen the pedestrian crossings at other sections of Nathan Road :

- (i) to widen the pedestrian crossing from 9 m to 12 m at Nathan Road near Haiphong Road. The widening works are in progress for completion by the end of this year; and
- (ii) to propose widening the pavement of the crossing at Nathan Road near Dundas Street and Hamilton Street. Consultation will take place shortly.

The TD will continue to closely monitor traffic and pedestrian flows at the pedestrian crossings along Nathan Road, and introduce appropriate improvement measures as and when necessary.

## **Breast Cancer**

9. **DR JOSEPH LEE** (in Chinese): *President, it has been reported that the number of new breast cancer cases gradually increased from about 1 000 in 1991 to 2 273 in 2004 and breast cancer has the highest growth rate of new cancer cases among women in recent years. Furthermore, according to the findings of a survey, the public do not have comprehensive knowledge about breast cancer, with only half of the female respondents undergoing breast examinations regularly. In this connection, will the Government inform this Council:*

- (a) *given that the annual number of deaths in respect of breast cancer is three to four times that of cervical cancer and the Government has launched a cervical cancer screening programme in 2004, whether it has studied the need to introduce a breast cancer screening programme; if it has, of the results of the study; if the result of the study is in the negative, of the justifications for that, and without a breast cancer screening programme, the ways to monitor and reduce the incidence of breast cancer in Hong Kong, as well as to ensure that grass-roots women recognize the importance of breast examinations and that they can afford the cost of taking mammograph;*
- (b) *whether it has assessed the health conditions of women (particularly those who have reached menopause) from the perspectives of social, mental and physical health; if it has, of the criteria adopted for and*

*details of the assessment; if not, of the reasons for that, and how the authorities take forward preventive education for women's health in accordance with the health conditions of women, so as to protect their health; and*

- (c) *given that some women have mistaken breast tumours for lymphoedema, resulting in delayed treatment, how the Government assists, in terms of resource allocation and promotion efforts for health services, women in ascertaining their health conditions, adopting healthier lifestyles and preventing them from delaying treatment?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese):  
President,

- (a) Members of the public should live a healthy lifestyle and keep track of their physical conditions in order to maintain health and prevent diseases. Medical examination and related screening should only be taken as and when required.

Overseas studies and experience show that cervical screening can effectively reduce the incidence and mortality of cervical cancer. In view of this, the Administration has taken forward the Cervical Screening Programme in partnership with other health care service providers since 2004.

With regard to breast cancer, there are currently three screening methods, namely breast self examination (BSE), clinical breast examination (CBE) and mammography. The Cancer Expert Working Group on Cancer Prevention and Screening (the Working Group) under the Cancer Co-ordinating Committee has made a thorough and scientific assessment of the three methods. The Working Group concludes from the assessment that there is currently insufficient scientific evidence to support a recommendation for the above three screening methods to be conducted for all women in Hong Kong. However, it recommends that all women should be encouraged to pay heed to the health of, and any abnormal changes to, their breasts. In addition, the Working Group advises that women with higher risk of developing breast cancer (such as women aged 50 or above, women with

first-degree relatives having breast cancer or women having recovered from benign breast diseases) may be individually assessed by medical professionals to determine the appropriateness of breast cancer screening through CBE and mammography.

The Department of Health (DH) collects cancer data from the death registration database and Hong Kong Cancer Registry of the Hospital Authority to monitor the situation of cancer in Hong Kong. To strengthen public knowledge of breast cancer prevention, the DH has provided the public with information on breast health, cancer prevention and health promotion for women through various channels such as roving exhibitions, hotline service, its website and various publications, and in collaboration with community organizations. The Woman Health Centres (WHCs) and the Maternal and Child Health Centres (MCHCs) under the DH have been working actively to raise women's awareness of breast health and help them identify any abnormal changes to their breasts so that early treatment could be sought. The WHCs and 10 MCHCs also offer mammography service to women with high risks and fees are charged at a reasonable level.

(b) and (c)

Between 2003 and 2004, the DH conducted a Population Health Survey jointly with the Faculty of Medicine of the University of Hong Kong, in which over 7 000 non-institutionalized people of Hong Kong aged 15 and above were covered, and a wide array of health-related data of our population collected.

The survey revealed that more than half of the female respondents aged 15 and above rated their health positively. On physical health, about 25% of the female respondents aged 15 and above had hypertension whereas their morbidity for diabetes, cancer and coronary heart disease were 3.8%, 1.5% and 1.2% respectively. As for health risk factors, over 30% of the female respondents aged 15 and above were overweight or obese and lack of physical activity and exercises; about 80% of them consumed less than five portions of vegetables and fruits daily; 4.7% of them smoked every day; and less than 1% of them had a daily consumption of alcohol. On mental health, 2.6% and 2.1% of the female respondents suffered from anxiety disorder and depression disorder respectively. As for

psychosocial health, over 60% of the female respondents indicated that they would be given emotional support when they so required, while over 50% of them thought that they would be provided with financial support when they were in need of such help.

Programmes on health promotion and disease prevention are made available by the DH for women aged 64 or below in its WHCs and 10 MCHCs. Services provided include health education, individual counselling, physical examinations and appropriate screening tests. Moreover, free information leaflets are distributed and talks on women's health are conducted regularly. The DH also disseminates health information through its websites and hotline service, with a view to encouraging and assisting women to better understand their own health conditions and make positive changes to their lifestyle.

### **Maintenance Problems in PRH Flats**

10. **MR ALBERT CHAN** (in Chinese): *President, recently, I have received complaints from quite a number of members of the public about the maintenance problems in flats newly allocated to them by the Housing Department (HD). In this connection, will the Government inform this Council:*

- (a) *of the number of complaints received in each of the past three years concerning the maintenance problems in newly-occupied public rental housing (PRH) flats, broken down by the types of maintenance problems involved; and*
- (b) *whether it will consider establishing an acceptance system whereby the quality of PRH flats will be checked and verified by professionals, and such flats will be rented out only when their quality has attained the level of satisfaction; if so, of the details of the system; if not, the reasons for that?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): President, for both newly constructed PRH flats and refurbished PRH flats, the HD has put in place a stringent monitoring and acceptance mechanism implemented by professionals and experienced site supervisory staff to ensure that the flats are of a satisfactory quality before they are let.

My reply to the two-part question is as follows:

- (a) Based on the HD's records, the number of complaints concerning maintenance of newly-occupied flats over the past three years and a breakdown of the repair items involved are set out in the Annex. Most of these cases involved minor repair items. The tenants were satisfied after simple rectification works were carried out.
- (b) All construction works of new public housing flats are closely monitored by professionally qualified and experienced contract managers of the HD and their project teams. Upon completion of construction, the site supervisory staff will conduct acceptance inspection according to a series of elaborate procedures. The contract managers will then verify the reports and undertake further site inspections to ensure that the buildings and flats are of a satisfactory quality before the flats are let. Recently, the HD launched an "Intake Ambassador" scheme to provide client-oriented and efficient repair services for tenants of newly built PRH flats during the intake period.

As regards refurbishment of existing flats, the contractors engaged are "Quality Maintenance Contractors" selected by the HD. For all repair items for which the owner is responsible, such as concrete spalling, water seepage and drainage, the HD will ensure that they are properly rectified. The maintenance teams of the HD, comprising professionals and experienced site supervisory staff, will perform strict monitoring during the works periods. Upon completion of works, they will carry out inspection to ensure that the repair and refurbishment are of a satisfactory quality. Moreover, tenants may also choose to apply to the HD for the "refurbishment allowance" and arrange on their own some simple repair and refurbishment works such as wall redecoration and repairs of in-flat tiles so as to advance the dates of intake.

After tenants have moved in their flats, the HD will still respond promptly to tenants' requests and carry out repairs for which the owner is responsible, to ensure that the flats are in good condition. In 2006, the HD launched the "Total Maintenance Scheme" to proactively inspect more than 600 000 PRH flats in the territory by phases, with a view to identifying maintenance problems to further improve the living environment of public housing estates.

## Annex

Number of Maintenance-related Complaints Lodged by New PRH Tenants  
over the Past Three Years

<i>Year</i>	<i>Total no. of tenants of newly-occupied flats in the year</i>	<i>Maintenance problems involved in the complaints</i>	<i>No. of complaints</i>	<i>No. of tenants involved</i>
2004-2005	34 314	Wall/floor/ceiling	121	238
		Water pipes/foul sewers	83	
		Sanitary fittings	68	
		Iron gates/ main doors/windows	73	
		Subtotal	345	
2005-2006	41 037	Wall/floor/ceiling	101	193
		Water pipes/foul sewers	66	
		Sanitary fittings	64	
		Iron gates/ main doors/windows	42	
		Subtotal	273	
2006-2007	28 831	Wall/floor/ceiling	126	241
		Water pipes/foul sewers	96	
		Sanitary fittings	54	
		Iron gates/ main doors/windows	49	
		Subtotal	325	

### Private Consultation Service Provided by Teaching Staff of Medical Faculties

11. **DR KWOK KA-KI** (in Chinese): *President, it is noted that after deduction of the relevant expenses and payables, the income received by the Faculties of Medicine of the University of Hong Kong (HKU) and The Chinese University of Hong Kong (CU) from the provision of private consultation service will be shared among the university, the departments of the faculty and the teaching staff concerned according to an established sharing arrangement. However, some teaching staff of the Faculties of Medicine have relayed to me the lack of transparency in the use of such income shared by the departments. Some of them do not even know the relevant arrangement and suspect that the income*

may have been misappropriated. In this connection, will the Government inform this Council whether it knows:

- (a) the following details concerning the teaching staff of the Faculties of Medicine who presently provide private consultation service:

Financial Year	2001-2002		2002-2003		2003-2004		2004-2005		2005-2006	
Affiliation	HKU	CU								
Numbers and ranks										
Average monthly salary										

- (b) the following details in respect of the 10 teaching staff providing the largest number of private consultation sessions in each of the following year:

Financial Year	2001-2002		2002-2003		2003-2004		2004-2005		2005-2006	
Affiliation	HKU	CU								
Number of private consultation sessions (annual total and weekly average)										
Number of consultation sessions for non-private patients at public hospitals (annual total and weekly average)										
Total attendances of private consultation in the year										
Total attendances of non-private consultation at public hospitals in the year										
Income obtained by teaching staff from the provision of private consultation service										

- (c) the following details in respect of the private consultation service provided by each of the department under the Faculties of Medicine of the two universities:

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
<i>Name of the university and the department concerned</i>					
<i>Attendances of private consultation</i>					
<i>Total income from the provision of private consultation service</i>					
<i>Attendances of private consultation with waiver of medical fee</i>					
<i>Amount of private consultation fees waived</i>					
<i>Amount of income from the provision of private consultation service being spent on the following expenditure items:</i> <i>(i) academic research</i> <i>(ii) attendance of overseas seminars</i> <i>(iii) other professional development purposes</i>					

**SECRETARY FOR EDUCATION AND MANPOWER (in Chinese):**  
President, the replies in (a) to (c) below are provided by the HKU and CU.

- (a) Details concerning the teaching staff of the Faculties of Medicine of the HKU and CU who presently provide private consultation service are as follows:

<i>Financial Year</i>	<i>2001-2002</i>		<i>2002-2003</i>		<i>2003-2004</i>		<i>2004-2005</i>		<i>2005-2006</i>	
	<i>HKU</i>	<i>CU</i>								
<i>Numbers and ranks (see Note 1)</i>	Total: 89 *****	Total: 83 *****	Total: 82 *****	Total: 81 *****	Total: 87 *****	Total: 89 *****	Total: 83 *****	Total: 98 *****	Total: 90 *****	Total: 83 *****
	5 Ass Prof	20 Prof	3 Ass Prof	16 Prof	4 Ass Prof	22 Prof	1 Ass Prof	22 Prof	4 Ass Prof	17 Prof
	3 Asso Prof	29 Prof 1	3 Asso Prof	36 Prof 1	3 Asso Prof	37 Prof 1	3 Asso Prof	41 Prof 1	1 Asso Prof	31 Prof 1
	10 Prof	23 Asso	12 Prof	22 Asso	10 Prof	1 Prof 2	9 Prof	6 Prof 2	10 Prof	7 Prof 2
	25 Ch Prof	Prof	24 Ch Prof	Prof	24 Ch Prof	22 Asso	23 Ch Prof	22 Asso	21 Ch Prof	26 Asso
	18 Lect	11 Ass	14 Lect	7 Ass Prof	17 Lect	Prof	16 Lect	Prof	21 Lect	Prof
	13 Sn Lect	Prof	14 Sn Lect		18 Sn Lect	7 Ass	18 Sn Lect	7 Ass Prof	20 Sn Lect	1 Ass Prof
	15 Reader		12 Reader		11 Reader	Prof	13 Reader		13 Reader	1 Others

Financial Year	2001-2002		2002-2003		2003-2004		2004-2005		2005-2006		
	Affiliation	HKU	CU	HKU	CU	HKU	CU	HKU	CU	HKU	CU
Average monthly salary	Ch Prof/ Prof/ Reader/ Sn Lect:	\$110,783	Ch Prof/ Prof/ Reader/ Sn Lect:	\$119,304	Ch Prof/ Prof/ Reader/ Sn Lect:	\$111,826	Ch Prof/ Prof/ Reader/ Sn Lect:	\$108,609	Ch Prof/ Prof/ Reader/ Sn Lect:	\$104,870	
	\$122,450 to \$171,210 *****		\$117,040 to \$171,210 *****		\$113,520 to \$171,210 *****		\$110,000 to \$171,210 *****		\$110,000 to \$145,150 *****		
	Asso Prof/ Ass Prof/ Lecturer:		Asso Prof/ Ass Prof/ Lecturer:		Asso Prof/ Ass Prof/ Lecturer:		Asso Prof/ Ass Prof/ Lecturer:		Asso Prof/ Ass Prof/ Lecturer:		
	\$41,465 to \$92,510		\$46,810 to \$88,425		\$48,853 to \$85,765		\$54,255 to \$83,105		\$61,765 to \$110,000		

(b) Details in respect of the 10 teaching staff providing the largest number of private consultation sessions in each of the following year are as follows:

Financial Year	2001-2002		2002-2003		2003-2004		2004-2005		2005-2006		
	Affiliation	HKU	CU	HKU	CU	HKU	CU	HKU	CU	HKU	CU
Number of private consultation sessions (annual total and weekly average)	693 (annual total) *****	NA (see Note 2)	734 (annual total) *****	NA (see Note 2)	747.5 (annual total) *****	NA (see Note 2)	756 (annual total) *****	NA (see Note 2)	758 (annual total) *****	NA (see Note 2)	
	13.3 (weekly average)		14.1 (weekly average)		14.4 (weekly average)		14.5 (weekly average)		14.6 (weekly average)		
Number of consultation sessions for non-private patients at public hospitals (annual total and weekly average)	N/A (see Note 3)	NA	N/A (see Note 3)	NA	N/A (see Note 3)	NA	N/A (see Note 3)	NA	N/A (see Note 3)	NA	
Total attendances of private consultation in the year	10 613	NA (see Note 2)	13 021	NA (see Note 2)	9 161	NA (see Note 2)	8 505	NA (see Note 2)	5 649	NA (see Note 2)	
Total attendances of non-private consultation at public hospitals in the year	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Income obtained by teaching staff from the provision of private consultation service	0 (see Note 2)	NA (see Note 2)	0 (see Note 2)	NA (see Note 2)	0 (see Note 2)	NA (see Note 2)	0 (see Note 2)	NA (see Note 2)	0 (see Note 2)	NA (see Note 2)	

- (c) Details in respect of the private consultation service provided by each of the department under the Faculties of Medicine of the two universities are as follows:

*HKU*

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
<i>Name of the university and the department concerned</i>	<i>HKU — Department of Anaesthesiology</i>				
Attendances of private consultation	44	114	143	190	495
Total income from the provision of private consultation service	\$306,695	\$768,009	\$981,129	\$1,438,021	\$2,462,326
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$63,961	(i) \$61,613	(i) \$396,515	(i) \$366,957	(i) \$1,422,493
(ii) attendance of overseas seminars	(ii) \$91,689	(ii) \$48,089	(ii) \$84,271	(ii) \$88,053	(ii) \$102,374
(iii) other professional development purposes (see Note 4)	(iii) \$16,403	(iii) \$28,682	(iii) \$31,509	(iii) \$28,138	(iii) \$36,227
<i>Name of the university and the department concerned</i>	<i>HKU — Department of Clinical Oncology</i>				
Attendances of private consultation	39	259	413	121	280
Total income from the provision of private consultation service	\$113,888	\$564,223	\$848,663	\$1,000,000	\$3,613,696
Attendances of private consultation with waiver of medical fee	0	0	0	0	1
Amount of private consultation fees waived	0	0	0	0	\$1,000

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$10,944	(i) \$428,506	(i) \$910,125	(i) \$611,041	(i) \$2,412,863
(ii) attendance of overseas seminars	(ii) \$8,045	(ii) \$3,111	(ii) \$83	(ii) \$3,828	(ii) \$17,723
(iii) other professional development purposes	(iii) 0	(iii) 0	(iii) 0	(iii) \$4,563	(iii) \$13,808
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU — Department of Diagnostic Radiology</i>				
Attendances of private consultation	0	0	145	171	235
Total income from the provision of private consultation service	0	0	\$185,657	\$193,270	\$258,720
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$3,345	(i) \$33,168	(i) \$3,166	(i) \$71,492	(i) \$155,486
(ii) attendance of overseas seminars	(ii) \$28,940	(ii) \$12,688	(ii) \$31,733	(ii) \$37,397	(ii) \$32,391
(iii) other professional development purposes	(iii) 0	(iii) \$888	(iii) \$506	(iii) \$666	(iii) 0
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU - Department of Medicine</i>				
Attendances of private consultation	9 836	12 997	8 511	6 727	5 454
Total income from the provision of private consultation service	\$5,877,909	\$9,078,529	\$6,666,175	\$5,670,576	\$4,301,442
Attendances of private consultation with waiver of medical fee	1,701	1,630	1,102	98	375
Amount of private consultation fees waived	\$396,830	\$449,505	\$247,205	\$48,050	\$96,735

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$1,784,854	(i) 11,749,562	(i) \$2,533,302	(i) \$286,273	(i) \$874,618
(ii) attendance of overseas seminars	(ii) \$360,497	(ii) \$320,462	(ii) \$269,425	(ii) \$77,056	(ii) \$179,851
(iii) other professional development purposes	(iii) \$260,461	(iii) \$389,134	(iii) \$333,727	(iii) \$312,330	(iii) \$294,585
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU — Department of Microbiology</i>				
Attendances of private consultation	4	4	2	11	9
Total income from the provision of private consultation service	\$104,168	\$44,379	\$76,739	\$55,547	\$45,259
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$405,152	(i) \$1,258,482	(i) \$1,533,003	(i) \$830,835	(i) \$1,179,434
(ii) attendance of overseas seminars	(ii) \$7,840	(ii) \$9,608	(ii) 0	(ii) \$1,409	(ii) \$9,155
(iii) other professional development purposes	(iii) 0	(iii) 0	(iii) 0	(iii) \$1,244	(iii) 0
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU - Department of Obstetrics and Gynaecology</i>				
Attendances of private consultation	1 743	822	1 650	2 387	2 428
Total income from the provision of private consultation service	\$3,253,417	\$3,607,997	\$3,576,653	\$5,296,077	\$5,685,438
Attendances of private consultation with waiver of medical fee	0	0	1,257	1,782	847
Amount of private consultation fees waived	0	0	\$606,860	\$872,955	\$410,300

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$4,541,141	(i) \$3,867,233	(i) \$3,991,433	(i) \$3,016,479	(i) \$4,232,285
(ii) attendance of overseas seminars	(ii) \$255,844	(ii) \$133,122	(ii) \$175,405	(ii) \$189,077	(ii) \$133,330
(iii) other professional development purposes	(iii) \$21,833	(iii) \$16,267	(iii) \$15,014	(iii) \$30,417	(iii) \$20,293
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU - Department of Orthopaedics and Traumatology</i>				
Attendances of private consultation	576	747	665	1 433	1 218
Total income from the provision of private consultation service	\$1,705,593	\$2,718,363	\$3,023,227	\$3,955,840	\$3,497,345
Attendances of private consultation with waiver of medical fee	2	10	25	44	116
Amount of private consultation fees waived	\$975	\$116,133	\$93,675	\$34,125	\$151,575
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$1,639,713	(i) \$1,270,573	(i) \$960,384	(i) \$882,047	(i) \$1,722,977
(ii) attendance of overseas seminars	(ii) \$178,252	(ii) \$147,033	(ii) \$82,569	(ii) \$149,718	(ii) \$179,256
(iii) other professional development purposes	(iii) \$2,930	(iii) \$1,882	(iii) \$1,496	(iii) \$20,931	(iii) \$15,974
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU - Department of Paediatrics and Adolescent Medicine</i>				
Attendances of private consultation	1 075	1 140	757	1 175	1 063
Total income from the provision of private consultation service	\$1,253,307	\$1,139,136	\$797,034	\$1,420,294	\$1,429,132
Attendances of private consultation with waiver of medical fee	2	5	3	3	7
Amount of private consultation fees waived	\$960	\$2,400	\$3,250	\$3,250	\$6,950

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$595,706	(i) \$791,109	(i) \$580,740	(i) \$563,369	(i) \$579,907
(ii) attendance of overseas seminars	(ii) \$264,851	(ii) \$133,085	(ii) \$53,488	(ii) \$131,075	(ii) \$116,350
(iii) other professional development purposes	(iii) \$24,917	(iii) \$45,190	(iii) \$58,787	(iii) \$66,175	(iii) \$47,213
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU — Department of Pathology</i>				
Attendances of private consultation	1 846	1 982	2 240	3 336	2 925
Total income from the provision of private consultation service	\$1,096,403	\$830,359	\$597,114	\$1,016,079	\$1,070,207
Attendances of private consultation with waiver of medical fee	3	6	3	5	7
Amount of private consultation fees waived	\$14,000	\$16,870	\$12,280	\$12,370	\$30,320
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$428,216	(i) \$187,285	(i) \$292,310	(i) \$492,453	(i) \$830,629
(ii) attendance of overseas seminars	(ii) \$9,323	(ii) \$11,213	(ii) \$33,480	(ii) \$11,633	(ii) 58,559
(iii) other professional development purposes	(iii) \$227	(iii) 0	(iii) 0	(iii) 0	(iii) \$13,632
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU — Department of Psychiatry</i>				
Attendances of private consultation	491	443	269	313	415
Total income from the provision of private consultation service	\$495,575	\$373,756	\$403,989	\$360,690	\$430,604
Attendances of private consultation with waiver of medical fee	8	18	4	14	6
Amount of private consultation fees waived	\$40	\$450	\$1,900	\$10,750	\$5,125

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$37,677	(i) \$43,289	(i) \$179,530	(i) \$202,421	(i) \$431,240
(ii) attendance of overseas seminars	(ii) \$36,783	(ii) \$9,289	(ii) \$52,165	(ii) \$66,816	(ii) \$65,518
(iii) other professional development purposes	(iii) \$7,916	(iii) \$2,170	(iii) \$5,480	(iii) \$13,871	(iii) \$6,435
(see Note 4)					
<i>Name of the university and the department concerned</i>	<i>HKU — Department of Surgery</i>				
Attendances of private consultation	2 835	3 082	2 643	2 707	4 297
Total income from the provision of private consultation service	\$5,856,938	\$8,710,039	\$8,252,010	\$13,916,532	\$13,772,940
Attendances of private consultation with waiver of medical fee	765	788	638	813	729
Amount of private consultation fees waived	\$427,876	\$805,804	\$1,255,587	\$1,106,866	\$1,416,024
Amount of income from the provision of private consultation service being spent on the following expenditure items:					
(i) academic research	(i) \$4,174,492	(i) \$7,229,284	(i) \$6,197,318	(i) 11,122,201	(i) \$9,667,995
(ii) attendance of overseas seminars	(ii) \$1,274,491	(ii) \$1,433,415	(ii) \$1,304,520	(ii) \$1,823,695	(ii) \$2,139,182
(iii) other professional development purposes	(iii) \$116,234	(iii) \$147,459	(iii) \$137,992	(iii) \$264,283	(iii) \$264,369
(see Note 4)					

*CU*

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
<i>Name of the university and the department concerned</i>	<i>CU — Anesthesia and Intensive Care</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$3,106,812	\$3,508,161	\$221,713	\$916,640	\$2,589,880

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$2,934,012	\$3,335,361	\$41,713	\$869,840	\$2,589,880
<i>Name of the university and the department concerned</i>	<i>CU — Anatomical and Cellular Pathology</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$658,388	\$1,019,397	\$1,090,988	\$2,990,460	\$4,640,963
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$594,402	\$988,811	\$980,301	\$2,933,246	\$4,428,219
<i>Name of the university and the department concerned</i>	<i>CU — Chemical Pathology</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$755,087	\$1,178,988	\$866,038	\$1,175,198	\$1,569,666

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$755,087	\$1,178,988	\$866,038	\$1,175,198	\$1,539,779
<i>Name of the university and the department concerned</i>	<i>CU — Clinical Oncology</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$361,675	\$668,395	\$802,999	\$1,056,402	\$951,532
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$297,164	\$549,587	\$589,861	\$753,175	\$599,458
<i>Name of the university and the department concerned</i>	<i>CU — Diagonostic Radiology and Organ Imaging</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$1,979,878	\$2,068,535	\$2,186,980	\$2,856,153	\$2,591,147

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$1,979,878	\$2,068,535	\$2,186,980	\$1,838,567	\$1,767,523
<i>Name of the university and the department concerned</i>	<i>CU — Medicine and Therapeutics</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$2,132,665	\$2,304,522	\$2,026,326	\$2,876,846	\$2,638,288
Attendances of private consultation with waiver of medical fee	15	19	28	22	20
Amount of private consultation fees waived	\$9,900	\$10,700	\$15,700	\$28,000	\$26,774.5
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$1,573,063	\$1,629,864	\$1,473,687	\$2,032,725	\$1,964,943
<i>Name of the university and the department concerned</i>	<i>CU — Microbiology</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$1,087,110	\$909,055	\$522,002	\$370,738	\$323,578

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$1,087,110	\$909,055	\$522,002	\$370,738	\$323,578
<i>Name of the university and the department concerned</i>	<i>CU — Obstetrics and Gynaecology</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$4,596,781	\$3,864,707	\$2,531,267	\$4,178,738	\$2,440,748
Attendances of private consultation with waiver of medical fee	22	10	34	32	31
Amount of private consultation fees waived	\$10,800	\$5,850	\$34,500	\$32,000	\$17,950
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$3,830,891	\$3,247,159	\$2,202,292	\$3,634,861	\$2,093,890
<i>Name of the university and the department concerned</i>	<i>CU — Ophthalmology and Visual Sciences</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$5,988,499	\$6,888,629	\$4,402,474	\$6,433,209	\$7,356,169

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Attendances of private consultation with waiver of medical fee	660	827	909	1 352	1 145
Amount of private consultation fees waived	\$430,450	\$538,400	\$579,550	\$879,900	\$688,650
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$4,334,510	\$4,482,621	\$3,113,230	\$4,453,750	\$5,334,224
<i>Name of the university and the department concerned</i>	<i>CU - Orthopedics and Traumatology</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$3,874,137	\$3,663,157	\$3,530,768	\$3,800,676	\$3,038,330
Attendances of private consultation with waiver of medical fee	307	287	203	241	142
Amount of private consultation fees waived	\$131,600	\$120,400	\$80,800	\$100,800	\$60,400
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$2,100,826	\$1,969,444	\$2,036,116	\$2,504,990	\$1,693,032
<i>Name of the university and the department concerned</i>	<i>CU — Paediatrics</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$103,883	\$124,583	\$105,497	\$134,897	\$265,783

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$77,558	\$103,148	\$92,897	\$99,622	\$220,117
<i>Name of the university and the department concerned</i>	<i>CU — Psychiatry</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$883,680	\$1,563,816	\$1,843,073	\$1,658,840	\$1,460,370
Attendances of private consultation with waiver of medical fee	19	22	44	76	64
Amount of private consultation fees waived	\$14,250	\$14,250	\$27,750	\$37,000	\$37,100
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$710,180	\$1,091,383	\$1,255,445	\$1,043,585	\$975,846
<i>Name of the university and the department concerned</i>	<i>CU — Surgery</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$12,894,658	\$15,189,387	\$12,993,819	\$12,289,237	\$14,607,668

<i>Financial Year</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Attendances of private consultation with waiver of medical fee	15	11	4	1	9
Amount of private consultation fees waived	\$137,525	\$9,967	\$30,994	\$54,588	\$13,725
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$9,289,918	\$11,003,605	\$8,926,758	\$8,142,619	\$10,998,328
<i>Name of the university and the department concerned</i>	<i>CU — University Pathology Service</i>				
Attendances of private consultation	NA				
Total income from the provision of private consultation service	\$196,149	\$266,069	\$264,757	\$548,965	\$792,427
Attendances of private consultation with waiver of medical fee	0	0	0	0	0
Amount of private consultation fees waived	0	0	0	0	0
Amount of income from the provision of private consultation service being spent on the following expenditure items: (i) academic research (ii) attendance of overseas seminars (iii) other professional development purposes (see Note 4)	\$196,149	\$266,069	\$264,757	\$548,965	\$792,427

NA: Information not available.

Note 1: Ass Prof = Assistant Professor  
 Asso Prof = Associate Professor  
 Prof 1 = Professor 1  
 Prof 2 = Professor 2  
 Prof = Professor  
 Ch Prof = Chair Professor  
 Lect = Lecturer  
 Sn Lect = Senior Lecturer

Note 2: For the HKU, all income generated from private consultation service are deposited to the Medical Faculty and related departmental accounts. The income will be used to support expenses for academic research, overseas conferences and other professional development purposes.

For CU, information for 2001-2002 to 2005-2006 is not available as such parameters were not built in the system of both CU and the Hospital Authority before 2006-2007.

Note 3: Due to time constraint, the HKU is unable to provide figures on the annual total and weekly average number of consultations sessions for non-private patients at public hospitals by the 10 teaching staff providing the largest number of private consultation sessions. The HKU however has randomly selected a typical week for each year and the number of sessions are as follows:

	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006
Number of consultation sessions for non-private patients at public hospitals (in a randomly selected week)	67	73	73	73	76

Note 4: For the HKU, expenditure is charged against current year income and balance brought forward from previous years.

For CU, income is credited into departmental accounts/unit fund accounts, which have multiple income sources. The accounts are used for the purpose of academic activities, including academic research, attendance of overseas seminars and other professional developments purposes. At the time of disbursement, the source of income is not identified.

## Dolphin Carcasses Found in Hong Kong Waters

12. **MISS CHOY SO-YUK** (in Chinese): *President, it has been reported that the carcass of a Chinese White Dolphin was found off the Butterfly Beach at Tuen Mun in February this year. As no visible injury was found on the dolphin, hence it is not ruled out that its death was caused by excessive accumulation of heavy metals in its body. In this connection, will the Government inform this Council, in each of the past three years, of the number of carcasses of dolphin found (including the above dolphin carcass) in Hong Kong waters, the month and district in which such carcasses were found, the estimated age and cause of death of the dolphins, the estimated number of dolphins in Hong Kong waters, and the specific measures taken by the Government to protect the habitat of the dolphins in Hong Kong waters?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Chinese): President, about 200 Chinese White Dolphins are found in Hong Kong waters, mainly distributed in the western waters of Hong Kong near the Pearl River Estuary.

The number of stranded Chinese White Dolphins found in Hong Kong over the past three years is as follows:

<i>Month</i>	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>	<i>Whole Year</i>
2004	-	2	1	2	-	-	2	-	-	-	-	3	10
2005	1	1	-	-	2	2	6	1	-	-	-	-	13
2006	-	1	-	-	-	-	2	-	1	-	-	1	5
Total	1	4	1	2	2	2	10	1	1	0	0	4	28

These stranded Chinese White Dolphins were mainly found in the waters and along the coast of Lantau Island, Tuen Mun, Sha Chau and Lung Kwu Chau. Of the above 28 cases, 12 dolphin carcasses were over 2 m long, which were adult dolphins with estimated age over 14 years old; three were 1.5 m to 2 m in length, which were young dolphins with estimated age between one to 14; and 13 under 1.5 m long, which were baby dolphins with estimated age below one. As most dolphin carcasses were badly decomposed when discovered, the cause of death could not usually be determined.

The Agriculture, Fisheries and Conservation Department (AFCD) has previously analysed liver tissue samples of 25 Chinese White Dolphins and the results indicated that the level of heavy metals contaminants in them was all at a normal level.

There was no visible injury on the carcass of the Chinese White Dolphin found off the Butterfly Beach at Tuen Mun on 19 February this year. As the dolphin's carcass was already decomposed when discovered, its cause of death could not be determined upon investigation by the dedicated officers of the AFCD and the Ocean Park Conservation Foundation. The AFCD had also analysed tissue samples of the dolphin. The results indicated that the level of organic contaminants in the dolphin's body was at a normal level and this was not the cause of death.

The Government, with reference to the previous scientific studies on dolphins, has developed a Conservation Programme for the Chinese White Dolphins and adopted the following measures to protect dolphins and their habitat:

- (1) monitor the number of dolphins and their distribution on a long-term basis;
- (2) assess the heavy metals and organic contaminants accumulated in the bodies of dolphins;

- (3) establish and manage marine parks to protect Chinese White Dolphins and their habitat;
- (4) monitor works projects that may affect dolphins and their habitat according to the Environmental Impact Assessment Ordinance to protect the marine environment from impacts of these projects;
- (5) raise public awareness of dolphin protection through publicity and education;
- (6) co-operate with the Guangdong authorities to jointly protect the Chinese White Dolphins in the Pearl River Estuary.

In addition, the AFCD commissioned the City University of Hong Kong to conduct a two-year study on the heavy metals and organic contaminants in the dolphins' bodies in late 2005, with the objective of assessing the ecological risk of Chinese White Dolphins in Hong Kong. The study is expected to complete by end of this year and its findings will help us acquire more information about dolphins.

### **Proposals for Universal Suffrage**

13. **MS EMILY LAU** (in Chinese): *President, it was reported that while speaking on the issue of universal suffrage at a meeting with senior representatives of the media on the 21st of last month, the Chief Executive said, "I would like to tell Ms Emily LAU and the likes of her that what (the models for universal suffrage) they demand can only be found in heaven indeed". He also described the proposals for universal suffrage consolidating the views of various sectors as "雜種" (that is, "half-breed"). In this connection, will the executive authorities inform this Council:*

- (a) *of the proposals referred to as "雜種" by the Chief Executive, and whether he will withdraw the use of the term "雜種", which is both insulting and racially discriminatory;*
- (b) *of the reasons for the Chief Executive to comment that the models for universal suffrage demanded by Emily LAU and the likes of her (that is, the electoral models completely in line with the principle of universal and equal suffrage) can only be found in heaven indeed; and*

- (c) *given that the Chief Executive had openly ruled out the electoral models which are completely in line with the principle of universal and equal suffrage, whether this indicates that the green paper on constitutional development to be published by the authorities in the middle of this year will not contain any proposal for the true implementation of universal suffrage?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Chinese): President, the Government of the Hong Kong Special Administrative Region (HKSAR) is firmly committed to achieving the ultimate aim of universal suffrage in accordance with the Basic Law. The Chief Executive has undertaken to publish a green paper on constitutional development in mid-2007, after the third term HKSAR Government has been formed in July.

We will set out in the green paper different views put forth by the Commission on Strategic Development and the community on the options, roadmap and timetable for implementing universal suffrage. In order to facilitate public discussion, we will summarize the relevant views and present three types of options in the green paper. At this stage, the HKSAR Government has not drawn any conclusions on the model for implementing universal suffrage, and has not rejected any proposal. All proposals received from political parties, different organizations and individuals will be covered by the green paper.

To attain universal suffrage, the community must achieve consensus on the specific model for implementing universal suffrage. The method for implementing universal suffrage should be consistent with the Basic Law, and should not require any amendments to the main provisions of the Basic Law. We also hope that it will attract majority support among Hong Kong people, and will stand a reasonable chance of securing two-thirds majority in the Legislative Council and stand a good chance of being considered seriously by the Central Authorities.

We will consult the public widely on the green paper and will listen to the views of Legislative Council Members, individuals from different sectors and strata, as well as district personalities. Following the end of the three-month public consultation period, we will summarize the views of the community and assess whether there is a foundation for us to come up with a set of mainstream views for taking forward the work to the next phase. To form a mainstream view within the community, different political parties, organizations and individuals must build on common ground and accommodate mutual differences,

and must be willing to consider the proposals of other people seriously with an open mind, so as to secure consensus for implementing universal suffrage in Hong Kong. We will submit a report to the Central Authorities reflecting faithfully any mainstream views formed and other views expressed.

### **Information Technology Projects**

14. **MR SIN CHUNG-KAI** (in Chinese): *President, in recent years, the Government has taken a more flexible approach in dealing with procurement matters relating to information technology (IT) projects, including the following two arrangements: (a) the launch of a pilot scheme for opening up intellectual property (IP) rights, under which contractors are allowed to own the IP rights of the new IT systems they have developed for the Government and to use such IP rights for commercial purposes, although the Government may retain those IP rights for reasons such as public interest, and (b) setting a ceiling on the legal liabilities to be borne by the contractors in respect of the losses indirectly caused by them. In this connection, will the Government inform this Council:*

- (a) of the details of the IT projects approved by the Government since the launch of the aforesaid pilot scheme, including the project names, the government departments by which the outsourcing contracts were awarded, the starting and ending dates of the tendering exercises, and whether the IP rights are/will be owned by the contractors or the Government, together with the Government's reasons for retaining such IP rights;*
- (b) of the details of the IT projects approved so far for which a ceiling on the possible legal liabilities to be borne by the contractors has been set, including the project names, the government departments by which the outsourcing contracts were awarded, the start and end dates of the tendering exercises, and the types of legal liabilities for which a ceiling has been set;*
- (c) whether it has formulated guidelines to assist various departments in assessing if there is public interest reason in individual IT projects which warrants the retention of IP rights; if it has, of the relevant guidelines and assessment criteria; and*
- (d) as some contractors allege that certain government departments have failed to implement the above two arrangements, whether it has adopted measures, such as issuing guidelines or generic model*

*contracts to various departments, to ensure full implementation of those arrangements by various government departments; if it has, of the relevant measures; if not, the reasons for that?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Chinese): President,

- (a) The pilot scheme for opening up IP in government IT systems for commercial exploitation was launched in March 2006. The pilot scheme is to facilitate commercial exploitation of government IT systems originally developed by contractors. Only new projects that involve creation of IP by contractors are covered by the pilot scheme. As of December 2006, there were 10 IT projects that involved creation of IP in new government IT systems. Details of the projects are as follows:

- (i) Four IT projects with IP ownership vested in the contractors

<i>Bureaux and departments (B/Ds)</i>	<i>Tender/Project Name</i>	<i>Tender Issued in</i>	<i>Contract Awarded in</i>	<i>Contractor</i>
Efficiency Unit (EU)	Provision of an Integrated Call Centre (ICC) System and Facilities Management Service for the new ICC	September 2006	January 2007	PCCW Teleservices (Hong Kong) Limited
Office of the Government Chief Information Officer (OGCIO)	Provision of Implementation Service of Mobile Public Portal	October 2006	December 2006	Mofinity Limited
Information Services Department (ISD)	Implementation of Election Result Report Program	November 2006	November 2006	RainbowSoft Consulting Limited
EU	Development and Implementation of a Licence Application Tracking Facility	November 2006	December 2006	Toppan Forms Computer Systems Limited

## (ii) Six IT projects with the IP retained in the Government

<i>B/Ds</i>	<i>Tender/Project Name</i>	<i>Tender Issued in</i>	<i>Contract Awarded in</i>	<i>Contractor</i>	<i>Reasons cited by the Procuring B/D for not opening up the IP</i>
Inland Revenue Department (IRD)	Design, Supply, Delivery, Installation, Commissioning, Maintenance, Training and Related Services for the Implementation of the Taxpayer Portal System for the IRD	April 2006	October 2006	PCCW Solutions Limited	The preparation of tender was finalized before the announcement of the policy in March 2006.
Social Welfare Department (SWD)	Synchronization of the Departmental Hotline Service and the Departmental Homepage of the SWD	April 2006	September 2006	KanHan Technologies Limited	The preparation of tender was finalized before the announcement of the policy. The tender was first issued in February 2006 and was re-issued in April 2006.
Civil Engineering and Development Department (CEDD)	Software and Hardware Management System for the CEDD	May 2006	July 2006	Future Solutions Laboratory Limited	The tender was prepared in February 2006.
Hong Kong Police Force (HKPF)	Computer Assisted Palmprint and Fingerprint Identification System	June 2006	Not yet awarded	-	The IP was retained because of public interest. The system is for crime investigation, establishment of identity and access to criminal history.

<i>B/Ds</i>	<i>Tender/Project Name</i>	<i>Tender Issued in</i>	<i>Contract Awarded in</i>	<i>Contractor</i>	<i>Reasons cited by the Procuring B/D for not opening up the IP</i>
OGCIO	Design, Development and Implementation of a Reference Font and Input Software (ISO 10646 version) for Mobile and Wireless Computing Platforms	July 2006	August 2006	R & B Computer Systems Limited	The IP was retained because of public interest. However, the part of the IP relating to the font library and associated software tools will be opened up by making the library and tools made freely available to the community.
Leisure and Cultural Services Department (LCSD)	e-Government Service Delivery of Leisure Link System	October 2006	Not yet awarded	-	The IP was retained because of public interest and project urgency (Public Interest — the booking policy and logic implemented should be owned by the Government to prevent other parties from making unauthorized use of the logic or to take advantage of the services; Project urgency — the tender was finalized prior to commencement of the new IP policy, in order to meet the project delivery deadline of January 2008.)

- (b) Regarding contractor's liability, the procuring departments will, in consideration of the requirements of the IT projects concerned and the potential loss to the Government which are attributable to the contractor in undertaking the contract, negotiate with the contractor on the liability to be borne by the contractor. It is noted that certain liabilities cannot be subjected to negotiation under the law. Where applicable, we encourage government departments to specify a cap on the contractor's liability in IT tenders. We note that the following tenders issued by government departments in 2006 have specified liability caps. Details of the tenders are as follows:

<i>B/Ds</i>	<i>Tender/Project Name</i>	<i>Issued in</i>	<i>Awarded in</i>	<i>Contractor</i>	<i>Type of contractors' liability capped</i>
Government Logistics Department (GLD)	Supply, Delivery, Installation, Commissioning, Maintenance and Other Related Services of Server Systems	April 2006	October 2006	Automated Systems(HK) Limited Datacraft China/Hong Kong Limited ELM Computer Technologies Limited Expert Systems Limited Hewlett-Packard HKSAR Limited Jardine OneSolution (HK) Limited Microware Limited NCSI (HK) Limited NEC Hong Kong Limited	Indirect or consequential damages to the Government

<i>B/Ds</i>	<i>Tender/Project Name</i>	<i>Issued in</i>	<i>Awarded in</i>	<i>Contractor</i>	<i>Type of contractors' liability capped</i>
				PCCW Solutions Limited Senco-Masslink Technology Limited System-Pro Solutions Limited Toppan Forms Computer Systems Limited	
GLD	Supply, Delivery, Installation, Commissioning, Maintenance and Provision of Related Services of Network Products	July 2006	December 2006	Automated Systems (HK) Limited Datacraft China/Hong Kong Limited DMX Technologies (Hong Kong) Limited NEC Hong Kong Limited Macroview Telecom Limited Microware Limited PCCW-HKT Network Services Limited Jardine OneSolution (HK) Limited	Indirect or consequential damages to the Government

<i>B/Ds</i>	<i>Tender/Project Name</i>	<i>Issued in</i>	<i>Awarded in</i>	<i>Contractor</i>	<i>Type of contractors' liability capped</i>
				Roctec Technology Limited  Electronic Business Solutions Limited  Expert Systems Limited  Unisys China/Hong Kong Limited  Wafer Systems (Hong Kong) Limited	
GLD	Supply, Delivery, Installation, Commissioning, Maintenance and Provision of Related Services of PC Equipment	August 2006	Not yet awarded	-	Indirect or consequential damages to the Government
EU	Provision of an ICC System and Facilities Management Service for the new ICC	September 2006	January 2007	PCCW Teleservices (Hong Kong) Limited	Indirect or consequential damages to the Government
Civil Service Bureau (CSB)	Application Maintenance, Support and Hosting of the Learning Portal System Implemented for Civil Service Training and Development Institute (CSTDI)	September 2006	January 2007	PCCW Solutions Limited	Contractor's total liability except third party personal loss, damage, injury or death, and damages for IP

<i>B/Ds</i>	<i>Tender/Project Name</i>	<i>Issued in</i>	<i>Awarded in</i>	<i>Contractor</i>	<i>Type of contractors' liability capped</i>
OGCIO	Consultancy Study on Developing a Government Infrastructure and Sourcing Strategy for the Government of the Hong Kong Special Administrative Region	October 2006	January 2007	Gartner Hong Kong Limited	Indirect or consequential damages to the Government

We do not have ready information on a full list of IT contracts awarded by government departments that have arrived at capping of contractor's liabilities after negotiation with contractors.

- (c) Guidelines and sample contract terms and conditions (T&Cs) have been developed and issued to government departments for assisting them to implement the pilot scheme. As the nature and targets of public services provided by individual government departments may differ, the respective procuring departments will, based on their business environment, decide whether to retain the IP for reason of public interest. Such decision should be made by an officer at the level of assistant head of government department or above. We will provide advice to the procuring departments, where necessary, to assist them in making the decision. Guidelines and sample contract T&Cs are attached at Annexes 1 and 2 respectively for reference.
- (d) We have taken measures to ensure the implementation of the two arrangements by giving guidelines as well as sample contract provisions for reference by government departments. We have also posted the guidelines and sample contract provisions in the Government's Intranet.

**Office of the  
Government Chief Information Officer**

**Guidelines for  
Opening Up Intellectual Property Rights of  
New IT Systems**

Version: 1.3

**September 2006**

©The Government of the Hong Kong Special Administrative Region (HKSAR)  
The contents of this document remain the property of the Government of the HKSAR

<b>Amendment History</b>				
<b>Change Number</b>	<b>Revision Description</b>	<b>Pages / Sections Affected</b>	<b>Version Number</b>	<b>Date</b>
1	Add sample T&Cs in Appendix A  Revise section 3.4.3 to align with the sample T&Cs	Appendix A  Section 3.4.3	1.1	26 July 2006
2	Add a new section 6.5 to advise B/Ds on seeking consultation from relevant authorities	Section 6.5	1.2	8 August 2006
3	Revise clause 2.4 of sample terms and conditions	Appendix A	1.3	26 September 2006

---

## 1. Purpose

1.1. At its meeting on 6 October 2005, the Policy Committee endorsed a pilot scheme to facilitate commercial exploitation of Government information technology (IT) systems. An OGCIO Circular No. 1/2006 was issued on 2 March 2006 to inform bureaux and departments (B/Ds) of the scheme and advise B/Ds on the way forward. This document aims to provide guidelines to assist B/Ds to implement the pilot scheme.

## **2. The Pilot Scheme**

Salient points of the pilot scheme endorsed by the Policy Committee are as follows:

- (a) The ownership of the Intellectual Property (IP) created in new Government IT systems will be vested in the contractor that develops the system, except where the IP needs to be retained for public interest, legal or regulatory reasons.
- (b) The Government will obtain from the contractor a perpetual and royalty-free licence to use, modify and replicate the IT system.
- (c) The arrangement will be implemented as a pilot scheme for three years after which it will be reviewed to ascertain its effectiveness and identify areas for improvement.

### **3. Guiding Principles**

#### **3.1. Applicability of the Pilot Scheme**

3.1.1. The Pilot Scheme applies to IP created in new IT systems that are to be developed by contractors in a government contract awarded after the announcement of the Pilot Scheme.

3.1.2. The Pilot Scheme does not apply to (a) existing IT systems (that is, IP in existing IT systems that are currently owned by the Government will continue to be owned by the Government); and (b) IT systems that are to be created through contracts that have already commenced prior to the announcement of the Pilot Scheme. Notwithstanding this, B/Ds should continue to consider requests by contractors for commercial exploitation, if any, favourably in the spirit of the Pilot Scheme on a case-by-case basis.

#### **3.2. Ownership of IP vested in Contractors**

3.2.1. IP of IT systems that are first created for the performance of the contract in question will be vested in the contractor upon creation of the IP.

3.2.2. The Pilot Scheme does not involve transfer of any existing IP that belongs to the Government, the contractor, or a third party but is not created for the performance of the contract in question. The ownership of existing IP will remain with their owners. If existing IT system that belongs to the Government will be embodied as part of the new IT system, the B/D concerned should list out any such existing IT systems for purpose of clarity.

3.2.3. IT systems may undergo further modification and development by maintenance/enhancement contractor which may be different from the original one who develops the system. Ownership of IP arising from such further modification and development can be determined by the B/Ds concerned as whether vested in the new contractor or not on a case-by-case basis. For instance, a system enhancement may create additional sub-systems/functional modules the IP of which may have potential for commercial exploitation. In such a case, B/Ds may consider opening up the newly created IP to the developer, that is, the contractor that performs the enhancements. B/Ds should note that only the newly developed IP should be vested in the developer. That does not include any part of the original system that is owned by the Government or a previous contractor.

### **3.3. Ownership of IP retained by Government**

3.3.1. There may be circumstances under which ownership of IP created in a contract needs to be retained by the Government in whole or in part. Section 5 provides guidelines on the exceptional circumstances under which B/Ds may consider retaining IP ownership of their IT systems.

3.3.2. The decision to retain IP ownership should be made by the B/D responsible for the IT system in question and by an officer at or above the level of Assistant Head of Department or equivalent. The B/D concerned will be accountable for that decision which should be made prior to service acquisition. The decision should be made known to all potential bidders at the time of invitation to bid.

3.3.3. B/Ds should consciously decide before the time of invitation to bid whether a need to retain IP ownership is foreseeable. If a B/D initially considers that it is unnecessary to retain ownership at the time of invitation to bid but subsequently changes its decision according to exceptions endorsed by the Policy Committee (Section 2(a) refers) during the course of contract, contract negotiation and variation would be required as the contractor might have factored in the ownership of IP into their quotation and the B/D concerned may require additional costs to retain ownership.

### **3.4. Licences to the Government**

3.4.1. The Government does not need to own IP in order to satisfy Government's operational need to use or modify the IT systems. Such rights will be protected through licence described in this Section.

3.4.2. The Government will be granted licence from the contractor for new IP created in the IT system. Such licence should in general be perpetual, royalty-free, irrevocable, non-exclusive, worldwide, transferable and sub-licensable to allow the Government to exercise its rights.

3.4.3. In general, all such licences would be granted to the Government upon commencement of the contract in question unless the contractor needs to procure such licences from relevant third parties including subcontractors as required in the contract. In such case, the contractor should grant the required licences to the Government on or before the delivery of the deliverables concerned.

3.4.4. Exception does not apply in general in the event of termination of contract due to default of a contractor. The contractor should still grant the required licence to the Government as in the case of normal completion of contract.

3.4.5. B/Ds should pay attention to whether there will be creation of trademark, patent and/or registered design rights in the contract. If so, B/Ds should determine whether the Government should retain ownership for such IP in accordance with endorsed exceptions mentioned in Section 2(a).

3.4.6. B/Ds can include in tender specifications that the contractor shall deliver any source codes of the IT system and any existing IP (whether it is owned by the contractor or any third party) to the B/Ds for the Government to exercise its rights with the licence. B/Ds should determine the appropriate timing for such delivery depending on their need and the scope of contract. For instance, a contract covering implementation and maintenance services of an IT system may necessitate the delivery of source codes only at completion of the contract because the contractor would still maintain the system after implementation.

3.4.7. There may be subsequent assignments or transfers of the IP rights by the contractor and any subsequent owners, for example, from the contractor to a sub-contractor that is the developer of the IT system in question or to another company by selling the ownership. The contractor should undertake that any subsequent assignments or transfers would be subject to the same licence rights to the Government, and the contractor should also procure the same requirement in any subsequent assignments.

3.4.8. B/Ds usually do not require licence from the original developer for subsequent updates of the IT system by a maintenance contractor who is not the original developer.

3.4.9. For any existing IP that commercial licence is generally available in the market, B/Ds would adopt the standard licence terms offered by the product owner.

---

#### **4. Monitoring and Review**

4.1 The OGCIO will review the effectiveness of the pilot scheme and identify areas for improvement upon completion of the three-year pilot scheme.

4.2 Surveys will be conducted, in conjunction with the IT industry, to monitor and examine the following:

- (a) the extent to which the arrangement has benefited the development of the local IT industry;
- (b) whether vesting IP ownership in a single contractor will give rise to anti-competitive or monopolistic practices; and
- (c) whether the arrangement will result in reduction in tender prices for government IT contracts.

4.3 The OGCIO will collect from B/Ds basic contract information to facilitate the conduct of survey with the IT industry.

4.4 In addition to basic contract information, information on any applied exceptions will also be collected from B/Ds for analysis and necessary follow-up.

## 5. Guidelines on Retention of Ownership of IP

5.1 The Policy Committee endorsed that ownership of the IP created in new Government IT systems should be vested in the contractor developing the system, **except where the IP needs to be retained for public interest, legal or regulatory reasons**. The followings provide some sample circumstances (the list is not exhaustive) that B/Ds may consider for the Government to retain ownership of the IP:

5.1.1 If the transfer of the IP to an outside agency may endanger the integrity of security or law enforcement programmes, the B/D concerned should consider for Government to retain the ownership.

(N.B. The above refers to the subject content of IT system concerned. It should not be confused with the need to build in adequate information security features in any IT system to protect the integrity of the IT system and the business operation during the execution of the supporting IT system.)

5.1.2 The Government intends to make the IP:

5.1.2.1 generally available to the industry or the community at large instead of a single vendor, examples are (a) the font library and associated software tools for the Hong Kong supplementary Chinese character set and (b) common data formats (such as XML schemas) and associated tools; or

5.1.2.2 available to certain parties under intergovernmental obligations or as part of intergovernmental collaboration.

## **6. Sample Contract Terms and Conditions**

6.1 A set of sample contract terms and conditions (T&Cs) related to IP rights and the required licensing arrangement is provided at the Appendix for reference by B/Ds. B/Ds may incorporate the sample T&Cs into conditions of contract where relevant.

6.2 The Appendix provides the relevant terms related to IP rights where ownership is vested in the contractor. It does not cover exceptions where ownership is vested in the Government. B/Ds should note that the complexity of circumstances and the variety of ways that parties may arrange the allocation of the IP rights might not be covered by the sample T&Cs. B/Ds may use the sample T&Cs or adapt them to their specific needs in consultation with the Department of Justice where necessary.

6.3 The Appendix only provides a subset of terms and conditions required in a contract. It does not represent a complete set of conditions of contract.

6.4 The Appendix serves as a sample and should not be treated as standard terms and conditions. Consultation and vetting from Department of Justice should be sought in accordance with Stores and Procurement Regulations 345(c) and (d).

6.5 Should B/Ds seek consultation or vetting from Department of Justice (or other relevant authorities) on the terms and conditions of their IT tenders or contracts, B/Ds should explicitly make known to Department of Justice (or other relevant authorities) of their decision on whether to retain the IP ownership of their IT systems by the Government or to vest the IP ownership in the contractors in accordance with the OGCIO Circular No. 1/2006.

GUIDELINES FOR OPENING UP INTELLECTUAL  
PROPERTY RIGHTS OF NEW IT SYSTEMS

SAMPLE CONTRACT  
TERMS AND CONDITIONS

---

**Appendix A — Sample Contract Terms and Conditions Related to  
Intellectual Property Rights for reference**

(Please refer to the separate document)

## Commercial Exploitation of New IT Systems Developed in Contracts

### Sample Terms and Conditions covering intellectual property (IP) rights to vest ownership of IP of an information technology (IT) system in the contractor who develops the IT system

This set of sample terms and conditions only covers related provisions about intellectual property (IP) rights where the ownership of IP rights created in new information technology (IT) system is vested in the Contractor who develops the IT system. It does not represent a complete set of terms and conditions. This only forms a sample that covers general situation only and should not be treated as standard terms and conditions. Bureaux and departments (B/Ds) should be aware of the specific nature of the project involved and should ascertain whether the sample terms and conditions are adequate to protect the Government's interests.

#### 1. Definitions

*<Note to B/Ds: B/Ds should note that the definitions of "Custom Programs", "Deliverables", "Documentation", "Implementation Plan", "Pre-existing Contractor Supplied Software" and "Pre-existing Government Supplied Software" may vary from one contract to another. B/Ds should ascertain whether the sample definitions are adequate to protect Government's interest for any specific nature of contract involved. >*

In this Contract, unless the context otherwise requires, the following expressions have the following meanings:

"Contract"	means this contract made hereunder between the Government and the Contractor.
"Contractor"	means the person named in the Articles of Agreement in Part xx.
"Custom Programs"	means the application computer programs (including without limitation to source code, object and command code of such programs) to be written by the

- Contractor or its employees, agents or sub-contractors pursuant to Schedule xx of Part xx.
- "Deliverables" means all tangible and intangible goods and services delivered or otherwise provided, as the case may be, including but not limited to Custom Programs, Pre-existing Contractor Supplied Software, Documentation, source code, hardware, software, reports, plans, models, documents and other materials developed or supplied by the Contractor or its employees, agents or sub-contractors to the Government pursuant to this Contract.
- "Documentation" means the operating manuals, user instructions, technical literature, system specification and all other related materials as specified in Schedule xx of Part xx forming part of the Deliverables developed or supplied by the Contractor or its employees, agents or sub-contractors for aiding the use, application and maintenance of information technology system comprising Custom Programs and Pre-existing Contractor Supplied Software.
- "Government" means the Government of the Hong Kong Special Administrative Region.
- "Implementation Plan" means the time schedule and sequence of events for the performance of this Contract (the details of which are set out in Schedule xx of Part xx) or such other implementation plans as may be agreed by the parties to this Contract.
- "Intellectual Property Rights" means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each

case whether registered or unregistered and including applications for the grant of any such rights.

"Pre-existing Contractor Supplied Software" means the software to be supplied by the Contractor or its employees, agents or sub-contractors as specified in Schedule xx of Part xx and any other additional, customized or replacement software provided by the Contractor or its employees, agents or sub-contractors under the provisions of this Contract and they are (a) existing at the commencement date of this Contract; or (b) produced after the commencement date of this Contract, independently of this Contract.

"Pre-existing Government Application Software" means any existing application software provided by the Government to the Contractor for the performance of this Contract by the Contractor.

## **2. Ownership and Registration of Intellectual Property Rights**

- 2.1 Nothing in this Contract shall affect the parties' ownership of the Intellectual Property Rights in the Pre-existing Contractor Supplied Software or the Pre-existing Government Application Software.
- 2.2 All Intellectual Property Rights which exist in the Deliverables set out in Schedule xx of Part xx which form the relevant information technology system(s) pursuant to this Contract including but not limited to source code, object code and software, in whatever nature that are first created by the Contractor, its employees, agents or sub-contractors for the performance of this Contract shall be and at all times remain vested in the Contractor.
- 2.3 The ownership of all Intellectual Property Rights which exist in the Deliverables which are not set out in Schedule xx of Part xx *<Note to B/Ds: It refers to the same Schedule mentioned in Clause 2.2 above.>* shall as from creation become, and at all times thereafter remain vested

in the Government. Upon request by the Government, the Contractor shall at its sole costs and expense promptly deliver to the Government all the Deliverables referred to in this clause (including any drafts thereof) and all the copies thereof then in the Contractor's custody control or possession, whether in their completed forms or not. All Intellectual Property Rights in the Deliverables referred to in this Clause 2.3 so delivered up shall, if those rights have not already been vested in the Government, forthwith be assigned and transferred to the Government. The Contractor shall take all necessary steps to so assign and transfer such Intellectual Property Rights to the Government or procure such Intellectual Property Rights to be assigned and transferred to the Government.

*< Note to B/Ds: B/Ds should consider their specific requirements of their contracts taking into consideration the scope of work for the contracts. B/Ds should clearly identify the relevant IT systems and list in a Schedule of contract the deliverables of such IT systems where the ownership of which should vest in the Contractor (pursuant to Clause 2.2). In particular, B/Ds should list in the Schedule any customized programs of such IT systems where the ownership of which would vest in the Contractor (B/Ds may refer to paragraph 8 of OGCI Circular No. 1/2006 regarding the decision to retain ownership of IP by the Government). B/Ds should also specify if there exists any trade marks, for example, a government service logo, in the Deliverables the ownership of which should be vested in the Government for public interest. If no such specification is included, ownership of any trade marks in the Deliverables shall be vested in the Contractor in accordance with Clause 2.2. >*

- 2.4 The Contractor shall at its expense file application for registration of patents for any patentable inventions in the Deliverables vested in the Contractor pursuant to Clause 2.2 and in the Pre-existing Contractor Supplied Software in the Hong Kong Special Administrative Region and to maintain any such patent in force during the full period of protection permissible by the relevant laws including all extensions and renewals thereof. The Contractor shall also procure at its own expense the same obligations from any third party who owns Intellectual Property Rights in any part of the Pre-existing Contractor Supplied Software.

*< Note to B/Ds: If B/Ds anticipate there are any design for any product appearances and/or any trademarks for intellectual property rights in the Deliverables, B/Ds should enhance this clause by including design and/or trademark in addition to patent. >*

- 2.5 The ownership of any and all Intellectual Property Rights which arise from any changes, modifications, adaptations, improvements and development independent of this Contract made to the Deliverables by the Government, its authorized users assigns and successors-in-title pursuant to Clauses 5.1 and 5.2 herein shall vest in the Government, its authorized users assigns and successors-in-title.
- 2.6 The provisions of Clause 2 shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.

### **3. Disclosure of Intellectual Property Rights**

- 3.1 The Contractor shall report and fully disclose to the Government full information relating to the subsistence of Intellectual Property Rights in the Deliverables including but not limited to programs, functional modules, Documentation and their owners not later than the time of completion of the Contract or at such earlier time as the Government may require.

*<Note to B/Ds: B/Ds should as far as possible be more specific on the "earlier time as the Government may require" taking into consideration the scope and milestones of the contract in question. >*

- 3.2 The Government shall have the right to examine all records and supporting data of the Contractor which the Government reasonably deems pertinent to the identification of the Deliverables in accordance with the terms of this Contract.
- 3.3 The Contractor shall upon request provide the Government with all relevant information within reasonable time pursuant to Clauses 3.1 and 3.2.

### **4. Waiver of Moral Rights**

- 4.1 The Contractor hereby irrevocably waives and undertakes to procure at its own expense all relevant authors of the Deliverables or part thereof to irrevocably waive all moral rights (whether past, present or future) in the respective Deliverables, such waiver to take effect upon creation of the

Deliverables referred to in Clauses 2.2 and 2.3. Such waiver shall operate in favour of the Government, its authorized users assigns and successors-in-title as from the creation of such Deliverables.

## **5. Licence**

5.1 The Contractor hereby grants to the Government, its authorized users assigns and successors-in-title a non-exclusive, perpetual, royalty-free, irrevocable, worldwide, transferable and sub-licensable licence, for any purposes whatsoever (whether related to and/or contemplated by this Contract), to exercise any and all Intellectual Property Rights in any part of the Deliverables referred to in Clause 2.2.

5.2 The Contractor hereby grants for the benefits of the Government, its authorized users assigns and successors-in-title a non-exclusive, irrevocable and sub-licensable licence to use the Pre-existing Contractor Supplied Software and its related Documentation and in relation to any Pre-existing Contractor Supplied Software and its related Documentation to which the Contractor is not empowered to grant sub-licence(s), the Contractor hereby undertakes to procure at its own expense the grant of such rights for the benefits of the Government, its authorized users assigns and successors-in-title by the relevant third parties in respect of such Pre-existing Contractor Supplied Software and its related Documentation to be granted on or before the delivery of the Pre-existing Contractor Supplied Software and its related Documentation. Such licence to use shall include the following rights:

- (i) the right to use the Pre-existing Contractor Supplied Software and its related Documentation for all (or any one or more) purposes contemplated by this Contract; and
- (ii) the right to reproduce in any format as many copies of the Pre-existing Contractor Supplied Software and its related Documentation as are reasonably required for backup, operational use and security; and
- (iii) the right to adapt, enhance, modify and translate the Pre-existing Contractor Supplied Software and its related Documentation and/or combine them with other programs, things and materials for the support and maintenance of such programs, things and materials

and/or in order to prepare other works for the use and benefits of the Government, its authorized users assigns and successors-in-title. All Intellectual Property Rights of whatever nature in such altered or modified materials programs and things shall belong to and shall be and remain vested in the Government, its authorized users assigns and/or successors-in-title absolutely as soon as they are created.

- 5.3 The Contractor shall at its own expense produce for inspection by the Government within two (2) days upon written request all proper licences clearances waivers and releases in writing pursuant to Clauses 5.1 and 5.2.
- 5.4 In the event that application(s) for patent registration of Intellectual Property Rights in any Deliverables is or are to be made pursuant to Clause 2.4 herein, the Contractor shall register and/or record the licence(s) granted to the Government, its authorized users assigns and successors-in-title pursuant to this Contract and/or particulars thereof as is appropriate at the time such application(s) is or are made at its own expense. Where application(s) for patent registration of Intellectual Property Rights in any Deliverables has or have been made by the Contractor prior to the date of this Contract, the Contractor shall register and/or record the licence(s) granted to the Government, its authorized users assigns and successors-in-title to this Contract and/or particulars of such licence(s) as is appropriate in respect of the said pre-existing application(s) within fourteen (14) days after the date of this Contract. The Contractor shall also procure at its own expense the same obligations from any third party who owns any part of patent in the Deliverables.

*< Note to B/Ds: If B/Ds anticipate there are any design and/or trademark in the Deliverables (refer to Clause 2.4), B/Ds should enhance this clause by including design and/or trademark in addition to patent. >*

*< Note to B/Ds: B/Ds should consider whether their specific nature of projects require other licence terms for special software for implementation in addition to the above licence terms. >*

## **6. Delivery and Installation of the Software**

*< Note to B/Ds: This sample clause only covers sub-clauses related to IP rights. B/Ds should incorporate other relevant sub-clauses under this clause in tenders. >*

6.1 The Contractor shall deliver to the Government all Deliverables referred to in Clause 2.2 and any Pre-existing Contractor Supplied Software and its related Documentation in accordance with the Implementation Plan. The Contractor shall also deliver to the Government any and all source codes of Custom Programs and Pre-existing Contractor Supplied Software at such time required by the Government.

## **7. Assignment, Transfer or Transmission of Intellectual Property Rights**

7.1 In any assignment, transfer and/or transmission (or any agreement to do so, whether conditional or otherwise) of Intellectual Property Rights including by way of mortgage, assent, testamentary disposition or by operation of law in the Deliverables referred to in Clause 2.2 as permissible under the laws of Hong Kong (but excluding the cases of licence) by the Contractor or any third party who owns the Intellectual Property Rights in the Deliverables, the Contractor shall procure at its own expense the imposition on the other party as a term of such assignment, transfer and/or transmission (or any agreement to do so, whether conditional or otherwise) an obligation to comply with all of the Contractor's obligations to the Government, its authorized users assigns and successors-in-title in relation to the Intellectual Property Rights and any restrictions set out in this Contract on the use of the Intellectual Property Rights commencing on the date of acquisition of any ownership interest in the Intellectual Property Rights by that other party, including the obligation to procure at that other party's own expense the imposition of the same obligations and restrictions on any subsequent assigns or successors-in-title.

7.2 The Contractor shall procure at its own expense a condition on the party in receipt of any title, rights and/or interest in the said Intellectual Property Rights referred to in Clause 7.1 and its assigns successors-in-title that Government's rights pursuant to Clause 5 in the said Intellectual Property Rights shall be acknowledged in writing by the relevant assigns or successors-in-title and their assigns successors-in-title at no additional costs to the Government, its authorized users assigns and successors-in-title. The Contractor shall also procure at its own expense

the imposition of the same obligations from any subsequent assigns or successors-in-title.

- 7.3 The Contractor shall promptly notify the Government of the name, address and other pertinent information in regard to any assigns or successors-in-title referred to in Clause 7.2, and shall undertake to procure at its own expense that such party is required to do the same with regard to any subsequent assignment of the said Intellectual Property Rights. The Contractor shall also procure at its own expense the imposition of the same obligations from any subsequent assigns or successors-in-title.
- 7.4 The Government shall not be liable for any actions, claims, demands, costs, damages and expenses arising from the use operation exploitation or possession of the Intellectual Property Rights vested in the Contractor and any third party, any and all of their authorized users, assigns or successors-in-title in accordance with the provisions in this Contract.
- 7.5 The Contractor shall indemnify and keep the Government fully and effectively indemnified against all actions, claims, proceedings, demands, costs, charges and expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with any breach of this Clause 7.
- 7.6 The provisions of Clause 7 herein shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.

## **8. Termination of the Licence**

- 8.1 The Government, its authorized users assigns and successors-in-title may terminate the licence granted pursuant to Clauses 5.1 and 5.2, whether in relation to all or any part of the Deliverables at any time by giving not less than one (1) month's prior written notice to the Contractor, its assign or successor-in-title or their assigns or successors-in-title.

## 9. Warranties of the Contractor

*<Note to B/Ds: This sample clause only covers sub-clauses related to IP rights. B/Ds should incorporate other relevant sub-clauses under this clause in tenders.>*

### 9.1 The Contractor hereby warrants that:

- (i) it has the full capacity and authority and all necessary licences, permits and consents to enter into and to provide services under this Contract and any other documents to be entered into by it hereunder;
- (ii) the execution and delivery of this Contract and the performance by the Contractor of its obligations under it will not:
  - (a) result in a breach of, or constitute a default under, any instrument agreement or arrangement to which the Contractor is a party or by which the Contractor is bound; or
  - (b) result in a breach of any order, judgement or decree of any court or governmental agency to which the Contractor is a party or by which the Contractor is bound;
- (iii) the Deliverables as referred to in Clauses 2.2 and 2.3 shall consist of original works created, developed or made by the Contractor, its employees, agents or sub-contractors for the Government during the course of or in connection with this Contract, save and except for Pre-existing Contractor Supplied Software and related Documentation;
- (iv) the performance of this Contract by the Contractor, its employees, agents or sub-contractors, the use operation exploitation or possession by the Government, its authorized users assigns and successors-in-title of the Deliverables or any part thereof for all purposes does not and will not infringe any Intellectual Property Rights of any party;
- (v) the exercise by the Government, its authorized users assigns and successors-in-title of any of the rights granted to the Government under this Contract shall not infringe any Intellectual Property Rights of any party;

- (vi) the Contractor shall fully comply with its obligations provided in Clause 7 herein regarding the assignment, transfer and/or transmission of the Intellectual Property Rights and Clauses 2.4 and 5.4 herein regarding the registration of patents and the registration and/or record of their licences;
  - (vii) The services shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;
  - (viii) in respect of any software and other materials supplied or used by the Contractor, its employees, agents or sub-contractors in the performance of this Contract and in respect of which any Intellectual Property Right is vested in a third party:
    - (a) the Contractor has or shall have a valid and continuing licence under which it is entitled to sub-license the relevant software and other materials and the third party Intellectual Property Rights for itself and for the Government, its authorized users assigns and successors-in-title to use such software and other materials for all purposes; or
    - (b) prior to the use and incorporation of such software and other materials in the Deliverables, the Contractor will have obtained the grant of all necessary clearances for itself and for the Government, its authorized users assigns and successors-in-title authorizing the use of such software and materials for all purposes.
- 9.2 This Clause 9 shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.
- 9.3 If the Contractor receives written notice from the Government of any breach of warranties as set out in Clause 9 then the Contractor shall, without prejudice to any other rights or remedies the Government may have, at its own expense and as soon as possible after receiving such notice, modify or, at its option, replace such services or Deliverables or otherwise remedy such defect.

**10. Indemnity**

*<Note to B/Ds: This sample clause only covers sub-clauses related to IP rights. B/Ds should incorporate other relevant sub-clauses under this clause in tenders.>*

- 10.1 The Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against all actions, claims, demands, costs, damages and expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with any breach of this Contract by the Contractor, its employees, agents or sub-contractors.
- 10.2 The Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against all actions, claims, demands, costs, damages and expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the exercise of any rights granted to the Government under this Contract, the use operation exploitation or possession of the Deliverables, and/or any other materials developed or supplied by the Contractor, its agents or sub-contractors for the performance of this Contract or any part thereof infringes the Intellectual Property Rights of any party.
- 10.3 Either party shall forthwith notify the other in writing if it is aware of any claim for infringement of any Intellectual Property Rights in connection with or arising out of the performance of this Contract and will not make admission without the other's prior written consent.
- 10.4 The Contractor shall, in consultation with the Government, at its own expense conduct any litigation arising from any claim for infringement referred to in Clause 10.3 hereinabove and all negotiations in connection therewith.
- 10.5 The provisions of Clause 10 herein shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.

## 11. Confidentiality

- 11.1 The Contractor shall treat as proprietary and confidential all information, drawings, specifications, documents, contracts, design materials and all other data (including without limitation any personal particulars records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)) and materials of any nature (in or on whatever media)) which the Government has for the purposes of or in the course of performing this Contract supplied made available or communicated to the Contractor which the Government has designated as confidential provided that this sub-clause shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to this Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).
- 11.2 The Contractor shall indemnify and keep the Government its employees and authorized persons fully and effectively indemnified against all action, damages costs, claims, demands, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap. 486) which action and/or claim would not have arisen but for the negligence or omission of the Contractor, any of its employees, sub-contractors or agents (or any one acting on its/their behalf) in connection with the provision or receipt of the services provided under this Contract.
- 11.3 The Contractor hereby agrees that it will use such confidential information solely for the purposes of this Contract and that it will not, at any time before during or after the completion, expiry or termination of this Contract (howsoever occasioned):
- (a) disclose or divulge the same or allow the same to be disclosed or divulged whether directly or indirectly, to any third party; or
  - (b) use or allow to be used the same for any other purposes

without the Government's prior written consent and shall use its best endeavours to prevent any such disclosure thereof.

- 11.4 The Contractor undertakes to take all such security measures for the protection of the information, documentation and materials which it is obliged by this clause to keep secret and treat as confidential as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- 11.5 The Contractor shall ensure that each of its employees, agents, associates, sub-contractors, consultants and any other persons engaged in any work in connection with this Contract are aware of and comply with the provisions of this clause and the Official Secrets Ordinance (Cap. 521) and the Contractor shall indemnify and keep the Government fully and effectively indemnified against all costs, claims, demands, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses), loss, damage and liabilities which the Government may suffer, incur or sustain as a result of any breach of confidence (whether under this Contract or general law) by any such persons.
- 11.6 The Contractor undertakes, if so requested by the Government, to sign the Government's separate confidentiality agreement in a form prescribed by the Government and to procure each of its employees agents associates sub-contractors consultants and any other persons engaged in any work in connection with this Contract to whom any confidential information requires to be disclosed to do so. Copies of such agreements shall be provided to the Government within three days from the date of execution of the agreements.
- 11.7 The Contractor further agrees that it will not at all time itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or otherwise deal in any confidential information supplied to it by the Government or obtained while performing this Contract.
- 11.8 The Contractor shall promptly notify the Government and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons pursuant to any of the provisions in this clause.
- 11.9 The Contractor acknowledges that any unauthorized disclosure or use of

the confidential information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, the Contractor agrees that the Government will have the right to obtain an immediate injunction prohibiting any breach of Clause 11, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

- 11.10 The provisions of Clause 11 herein shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.

## **12. Consequences of Termination**

*<Note to B/Ds: This sample clause only covers sub-clauses related to IP rights. B/Ds should incorporate other relevant sub-clauses under this clause in tenders.>*

- 12.1 In the event of this Contract being determined whether by its satisfactory completion, effluxion of time, notice, breach or otherwise:
- (i) the Contractor shall forthwith grant or procure the grant to the Government, its authorized users assigns and successors-in-title licences in respect of the Deliverables referred to in Clause 2.2, whether in their completed forms or not, on the same terms and conditions as required in Clause 5.1 if such licences have not been granted pursuant to Clause 5.1 yet. The Contractor shall also forthwith deliver all Deliverables referred to in Clause 2.2 and source codes of Custom Programs whether in completed form or not to the Government and report and fully disclose to the Government required information in accordance with Clause 3.1;
  - (ii) the Contractor shall forthwith deliver to the Government pursuant to Clause 2.3 all materials relating to any work done in connection with this Contract existing at the date of such termination whether or not the same are completed. In the event of such termination all Intellectual Property Rights in the aforesaid materials shall, if not already vested in the Government, forthwith automatically pass to the Government who shall be entitled to enter any premises of the Contractor for the purpose of taking possession of such materials; and

- (iii) the Contractor shall forthwith deliver up to the Government all copies of any information and data and any Pre-existing Government Application Software supplied to the Contractor by the Government for the purposes of this Contract and shall certify to the Government that no copies of such information, data or Pre-existing Government Application Software have been retained.

12.2 Upon any termination (howsoever occurred) of this Contract the Contractor shall at its own costs and expense:

- (i) Assign or novate, insofar as the Contractor has the right to do so, all sub-contracts and licences of Intellectual Property Rights, and any other contracts which are necessary for the performance and/or completion of this Contract by the Government or at the Government's discretion by a new contractor(s) nominated by the Government.
- (ii) In the event the Contractor does not have the right to assign or novate such sub-contracts, licences or such other contracts the Contractor shall use its reasonable endeavours to procure the assignment or novation of sub-contracts, licences and contracts for the benefits of the Government.

### **13. Publicity**

13.1 The Contractor shall submit to the Government all advertising or other publicity materials relating to this Contract, or use operation exploitation or possession of any Intellectual Property Rights developed under this Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied. The Contractor shall not publish or use any such advertising or other publicity material without the prior written consent of the Government.

13.2 The Government shall have absolute discretion to refuse consent without any reason being given and the Contractor shall not be entitled to make any claim against the Government. The Contractor shall not advertise the appointment for this Contract without prior approval in writing from the Government Logistics Department < *the procuring department* > .

- 13.3 Any information related to this Contract which is intended for any publication by the Contractor shall be submitted to the Government for approval and the countries in which the information is to be disclosed shall also be specified.
- 13.4 The provisions of this Clause 13 shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.

#### **14. Software Asset Management**

- 14.1 The Contractor shall at all times during the validity of this Contract exercise due diligence in software asset management and as and when required by the Government, furnish to the Government satisfactory evidence that this subclause has been complied with.
- 14.2 The Contractor warrants and undertakes that the use of any software by the Contractor for the purpose of or otherwise in connection with the performance of this Contract shall not infringe any Intellectual Property Rights of any third party.
- 14.3 The Contractor shall notify the Government immediately in writing of any allegation, claims, actions and/or proceedings in respect of such infringement and any progress thereof from time to time.
- 14.4 If the Contractor's use of any Intellectual Property Rights for the purpose or otherwise in connection with the performance of this Contract is held by a court to constitute an infringement of a third party's Intellectual Property Rights, the Government may without prejudice to any other rights and remedies that it may be entitled to under this Contract, terminate this Contract forthwith by giving notice to the Contractor and recover from the Contractor the amount of any loss or damage sustained or incurred by the Government as a consequence of such termination.
- 14.5 The Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against all costs, claims, demands, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any

proceedings and liability of whatsoever nature arising out of or in connection with any claim that the use or possession of any software needed or installed for the purposes of this Contract infringes Intellectual Property Rights of any third party.

## **15. Execution of Further Documents**

- 15.1 The Contractor shall at its own costs and expense do and execute any further things and document(s) (or procure that the same be done or executed) as may be required by the Government to give full effect to Clauses 2, 3, 4, 5, 7, 9, 10, 11 and 12 and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing. *<Note to B/Ds: B/Ds should consider whether other clauses that are not covered in this sample should be referred to in this clause. >*
- 15.2 The provisions of Clause 15 herein shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.

**Streetlights**

15. **MR LAU KONG-WAH** (in Chinese): *President, will the Government inform this Council of:*

- (a) *the respective defect rates of streetlights in urban and rural areas in the past two years; and*
- (b) *the respective numbers of streetlights which have been installed for more than one month but have not yet been put into use in various districts at present, and the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**  
(in Chinese): President,

- (a) The total number of street lights in the territory is 129 410 as at end of March 2006 and 131 248 as at end of March 2007. The defective rates of streetlights are currently grouped by three regions managed under the "management, operation and maintenance contract", viz (1) Hong Kong Island, (2) Kowloon and New Territories East and (3) New Territories West. The defective rates of streetlights for the past two years and their distribution are as follows:

<i>Year</i>	<i>Defective Rate of Streetlights*</i>		
	<i>Hong Kong Island (including Lamma Island)</i>	<i>Kowloon and New Territories East (including Sha Tin, Sai Kung and Tai Po)</i>	<i>New Territories West (including Tsuen Wan, Kwai Tsing, Tuen Mun, Yuen Long and North District)</i>
From April 2005 to March 2006	6.2 % (18 258)	5.7 % (50 549)	5.5 % (60 603)
From April 2006 to March 2007	6.3 % (18 309)	3.4 % (50 889)	5.7 % (62 050)

\* The defective rate is the percentage of defective bulbs requiring replacement over the period. The total number of streetlights in each region is in bracket.

As a result of frequent inspection and replacement arrangements, over 99% of the streetlights in the three regions concurrently provided luminance in good working order over the past two years.

- (b) At present, there are 112 streetlights in the territory which have not been put into service after being installed for more than one month. Their distribution and reasons for not putting into service are as follows:

	<i>Pending completion of the related road works</i>	<i>Pending agreement of the locals</i>
	<i>No. of Streetlights</i>	<i>No. of Streetlights</i>
<b>Hong Kong Island</b>		
Hong Kong Island	0	0
<b>Kowloon and New Territories East</b>		
Kowloon	5	0
Sha Tin	0	0
Sai Kung	35	19 <sup>#</sup>
Tai Po	0	18 <sup>#</sup>
<b>New Territories West</b>		
Tsuen Wan	9	0
Kwai Tsing	5	0
Tuen Mun	0	0
Yuen Long	16	5 <sup>##</sup>
North District	0	0
Sub-total:	70	42

# The concerned streetlights are on Pak Tam Road. The Highways Department (HyD) shelved the installation due to some residents' objection. The HyD is actively liaising with the concerned rural committee and the residents.

## The concerned five streetlights are at Sei Pai Shek, Kam Tin, Yuen Long. Since some villagers object to the location of another light, these five lights are not able to be put into service due to power supply problem. The HyD is actively discussing with the concerned locals to resolve the issue.

## Poverty Alleviation

16. **MR FREDERICK FUNG** (in Chinese): *President, regarding the work in alleviating poverty, will the Government inform this Council:*

- (a) *whether it will consider extending the term of office of members of the Commission on Poverty (CoP), which will expire at the end of June this year, and expanding the functions of the CoP so as to ensure the continuation of the work in alleviating poverty;*

- (b) *of the progress in setting up the Family Commission, and how this Commission's organizational structure and mode of operation will enable it to co-ordinate and tie in with the work in alleviating poverty undertaken by other commissions and the relevant advisory bodies (for example, the CoP, the Elderly Commission and the Community Investment and Inclusion Fund Committee, and so on); and*
- (c) *whether it has plans to reorganize the existing Policy Bureaux and government departments with a view to taking forward the work in alleviating poverty in a more effective manner, and whether it will consider transferring the duties of implementing policies concerning employment and welfare services, which are now undertaken by the Economic Development and Labour Bureau and the Health, Welfare and Food Bureau respectively, to a newly-established and dedicated body?*

**FINANCIAL SECRETARY (in Chinese):** President,

- (a) Assisting the needy has been an established policy. The CoP is examining existing policies and programmes relating to poverty alleviation and prevention, to identify areas of improvements for implementation in the short as well as longer-term, and to make recommendations for continued work.

The Administration attaches great importance to the work on poverty alleviation and prevention. The next Administration will decide on the most suitable institutional structure to continue the work.

- (b) As set out in the 2006-2007 policy address, the Administration is currently studying whether we should set up an integrated, holistic and high-level Family Commission responsible for policies and initiatives relating to family support, and if so, the reorganization and resources reallocation that need to follow, including its interface with other relevant advisory bodies. The study is now in progress and will be completed by mid-2007. A final decision will be made by the next Administration.
- (c) Promoting work is core to alleviating poverty and achieving self-reliance. The Administration will continue to enhance the

employability of our workforce, provide effective employment support, promote employment opportunities, and where appropriate provide suitable work incentives to encourage work. The next Administration will decide on the most suitable institutional structure to continue the task.

### **Paid Paternity Leave**

17. **MR LEUNG YIU-CHUNG** (in Chinese): *President, in reply to a question from a Member of this Council on 21 June 2006, the Government indicated that it had no plan to provide paid paternity leave in addition to the existing annual leave benefits of civil servants, and it was seeking the legal advice of the Department of Justice (DoJ) on whether failure to legislate for paid paternity leave would constitute family status discrimination. It has been reported that there are local enterprises which have indicated one after another recently that they will provide paternity leave for their male employees, and according to the information of the International Labour Organization, statutory paternity leave is currently provided in 41 countries. In this connection, will the Government inform this Council:*

- (a) *of the legal advice provided by the DoJ on whether failure to legislate for paid paternity leave will constitute family status discrimination;*
- (b) *whether it will reconsider taking the lead in providing paid paternity leave for all government employees, including civil servants and non-civil service contract (NCSC) staff, and requiring companies which provide outsourcing services for the Government to follow suit, in order to put the "family-friendly" policy into practice; if it will, of the details; if not, the reasons for that; and*
- (c) *whether it will make reference to the experience of the countries concerned and study the feasibility of introducing statutory paid paternity leave in order to promote family harmony; if it will, of the details of the study; if not, the reasons for that?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): *President,*

- (a) *On the question of whether failure to legislate for paternity leave will constitute family status discrimination, we have sought the*

advice of the DoJ. The DoJ, having carefully studied the Family Status Discrimination Ordinance (FSDO), the Sex Discrimination Ordinance, the Basic Law and relevant sections of related international covenant, advises that failure to legislate for paternity leave should not constitute family status discrimination under the FSDO.

- (b) The vast majority of civil servants under the Government's employment are provided with full-pay annual leave ranging from 22 to 40.5 days, depending on their ranks, terms of appointment and years of service. Annual leave is provided for the purpose of recuperation from the pressure of work, betterment of health and attending to personal matters. To allow more flexibility in taking leave, the annual leave of civil servants can be accumulated up to a stipulated ceiling. Our record indicates that most civil servants have indeed accumulated a considerable balance of untaken leave which can be drawn for meeting personal needs that may arise during the year, including taking care of family members. As regards NCSC staff, their employment packages are formulated with reference to those applicable to civil servants and other relevant considerations. At present, we have no plan to provide paid paternity leave in addition to the existing annual leave benefits of civil servants and NCSC staff.

Under the general conditions of contracts for government outsourced services, contractors are required to comply with the laws of Hong Kong. They are required to provide employment benefits that their employees are entitled to in accordance with the Employment Ordinance. Whether the contractors will offer extra benefits in drawing up the terms of employment with their employees is a business decision of individual contractors. It is not appropriate for the Government to intervene.

- (c) The study undertaken by the Government on whether we should legislate for paternity leave for male employees is underway. Some countries (for example, Australia and New Zealand) provide unpaid paternity leave, while other countries (for example, the United Kingdom, France and Sweden) allow employees to take statutory paid paternity leave with the remuneration during the leave period being directly funded by the social insurance system. There are also significant variations among different places in terms of the eligibility, time and manner of taking paternity leave.

Furthermore, paternity leave for male employees is not governed by legislation in many advanced Western economies. The number of countries in our neighbourhood which provide statutory paternity leave is fairly small. It can be seen that the variations in the requirements and practices of different places are governed by the circumstances of individual places which involve underlying factors such as the economic situation, cultural background, social security and welfare system of the places concerned.

In assessing the feasibility of legislating for paid paternity leave, we will continue to study the relevant provisions and arrangements in various places of the world, the local socio-economic situation and take into account the views of different sectors of the community.

### **Chinese Medicine Information System**

18. **MR JASPER TSANG** (in Chinese): *President, it has been learnt that currently there are Chinese medicine clinics (CMCs) in Hong Kong using the Chinese Medicine Information System (CMIS) for storing clinical data on patient records and diseases in computers. In this connection, will the Government inform this Council whether it knows:*

- (a) *the number of CMCs currently using CMIS and the numbers of Chinese medicine practitioners (CMPs) and patients involved; whether the authorities concerned have set a target participation rate for the system; if they have, of the progress and whether they have assessed if the target can be met;*
- (b) *whether the authorities concerned will consider extending the scope of application of CMIS (such as allowing CMCs of local universities to join); and*
- (c) *whether the authorities concerned plan to link up CMIS and the Electronic Patient Record Sharing Pilot Project launched by the Hospital Authority (HA) for collecting records of patients who consult either Chinese or Western medicine practitioners, so as to enable Chinese and Western medicine practitioners to jointly explore ways to prevent and cure diseases?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese):  
President,

- (a) The HA has so far established a total of nine public CMCs. For the provision of services in these CMCs, a tripartite model has been adopted whereby the HA collaborates with a non-governmental organization (NGO) and a university in each of the clinics. The main purpose for the HA to install the CMIS at public CMCs is to enable these CMCs to keep a record of patients' information and medical history systematically and efficiently, so as to facilitate the collection of clinical information, overall management, audit and research. In addition to recording patients' information, the CMIS is also equipped with the functions of registering appointment booking, and processing fee payment and procurement of Chinese medicines.

At present, there are a total of eight public CMCs installed with the CMIS developed by the HA. With the assistance of the HA, the CMIS is also installed in the Hong Kong Baptist University Mr & Mrs CHAN Hon-yin Chinese Medicine Specialty Clinic & Good Clinical Practice Centre, which was established in October last year. A total of 142 CMPs have used the CMIS, involving 38 916 patients. As for the remaining one public CMC, it is installed with an information system developed by the Tung Wah Group of Hospitals (TWGH). The number of CMPs who have used the TWGH's system and the number of patients involved are 25 and 20 916 respectively. Since the TWGH also runs other CMCs (outside the HA's system) and has developed its own information system, the same system has thus been installed in the public CMC that the TWGH operates, so as to facilitate the follow-up of patients. This system can also efficiently record patients' information. Nevertheless, in order to standardize the information to be collected by the two systems, the HA maintains liaison with the TWGH to co-ordinate the operation of the two systems.

While the CMIS enables patients' information to be recorded systematically, the information and data kept in the CMIS can facilitate universities' researches into Chinese medicines. Our goal is to extend the use of the system to all the HA's CMCs with a view to enhancing the standards of their modern operation and management. The system is now in use in eight of the nine public CMCs. We plan to further implement this system in our new clinics. Meanwhile, the Clinic Management Committee, which is comprised of representatives from the HA and NGOs, will keep the operation of the clinics under regular review and identify the necessary improvements for further upgrading of the system.

- (b) The HA will actively consider helping other organizations (particularly the universities and NGOs that are in collaboration with the HA) set up the CMIS in their clinics. As mentioned in part (a), the CMIS has also been installed in the Hong Kong Baptist University Mr & Mrs CHAN Hon-yin Chinese Medicine Specialty Clinic & Good Clinical Practice Centre with the assistance of the HA.
- (c) In 2006, the HA introduced the Electronic Patient Record Sharing Pilot Project, aiming at assessing the technical feasibility and stakeholders' acceptance of sharing of electronic medical records between public and private sectors. The Project is currently run on a trial basis. Under this Pilot Project, participating private hospitals, medical practitioners, elderly homes and other relevant institutions are allowed to view their patients' medical records kept at the HA upon their patients' consent but they cannot make any alteration or addition to any medical record. The HA also cannot have access to the patients' medical records in private medical institutions under this Pilot Project.

On the other hand, the HA's clinical information systems for Chinese and Western medicines are currently two separate systems. In other words, information of patients of the CMCs cannot be found in the clinical information system for Western medicine. To include the CMIS in the Pilot Project, professional collaboration between Chinese and Western medicines and technical problems must first be resolved. Besides, the inclusion of the CMIS in the Pilot Project needs to involve the participation of private CMPs. At present, information technology is yet to be widely used in the Chinese medicine sector. Hence, it is still premature to launch any electronic patient record sharing project in the Chinese medicine sector.

In light of the above, the HA has no immediate plan to include the CMIS in the Electronic Patient Record Sharing Pilot Project. That said, it is still the long-term goal of the HA to further develop the interface between Chinese and Western medicines. In this connection, the HA will take an active role in the planning of clinical research projects under the premise of developing "evidence-based" Chinese medicine, so as to enable Chinese and Western medicine practitioners to jointly explore ways to prevent and cure diseases.

## Comprehensive Water Mains Improvement Scheme

19. **MR JAMES TO** (in Chinese): *President, it has been learnt that the Water Supplies Department (WSD) is implementing a 15-year comprehensive water mains improvement scheme to replace and rehabilitate the aged fresh water and salt water mains throughout the territory, and the Department has launched the scheme on Hong Kong Island first. The Government anticipates that with the implementation of the scheme, incidents of water mains burst and leakage can be substantially reduced in the future. In this connection, will the Government inform this Council:*

- (a) *of the number of incidents of water mains burst in Kowloon and the New Territories in the past six months;*
- (b) *for districts in which incidents of water mains burst occur before the implementation of water mains replacement works, whether the Government will advance the replacement of the water mains there, or it will only rehabilitate the burst water mains and replace the water mains in the districts later as scheduled; if the latter is the case, whether it will cause duplication of work processes and a waste of resources; and*
- (c) *of the expected lifespan of the new water mains?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**  
(in Chinese): President,

- (a) There were a total of 586 incidents of water mains burst in Kowloon and the New Territories in the past six months. The detailed breakdown is as follows:

	2006			2007			Total
	October	November	December	January	February	March	
Kowloon	53	53	52	57	35	56	306
New Territories	59	47	63	36	28	47	280
Total	112	100	115	93	63	103	586

- (b) When a water main bursts, the WSD's emergency repair service staff and the contractor's emergency repair team will attend the

incident immediately. The main task is to isolate the burst main from water sources as soon as possible and to repair the water main and resume water supply promptly. The aim is to minimize disruption to the traffic due to the burst and to alleviate any inconvenience caused to the public and business operators as a result of water supply suspension. The WSD attaches great importance to such repair work to fulfil its performance pledge. At present, the WSD's performance targets for emergency repair of burst water mains are as follows:

<i>Services</i>	<i>Performance Target</i>
Time for isolation of burst water mains upon receipt of report	
— for pipe diameter up to 300 mm	85% within 1.5 hours
— for pipe diameter above 300 mm to 600 mm	85% within 2.5 hours
Maximum duration of supply interruption due to fresh water main burst	85% within 8 hours 95% within 12 hours

The main objective of the comprehensive Replacement and Rehabilitation Programme of Water Mains is to systematically replace and rehabilitate about 3 000 km of aged water mains. The programme is being launched in stages for completion by 2015. Given the scale of the undertaking, the WSD has to consult the respective District Councils and the Legislative Council, and to reach consensus with relevant departments such as the Highways Department, the Transport Department, the police and the Environmental Protection Department before commencement of works. Staging of works is based on major considerations as follows:

1. Avoid the serious disruption of water supply to users that could be caused by extensive replacement and rehabilitation of water mains;
2. Avoid the traffic congestion that could be caused by extensive road excavation for the project; and
3. Accord priority to replacing and rehabilitating water mains that are in poorer condition and prone to leakage and bursting for enhancement of cost-effectiveness.

The objectives and considerations of the Replacement and Rehabilitation Programme of Water Mains and of the emergency repair of burst water mains are entirely different. As such, there is no question of duplication of work processes and waste of resources. If replacement/rehabilitation of water mains is carried out as part of the emergency repair of burst water mains, there will be unnecessary delay in resuming water supply and unwarranted disruption to the public and the traffic.

- (c) The types of pipes used in the Replacement and Rehabilitation Programme of Water Mains are mainly:

<i>Diameter of Pipes (mm)</i>	<i>Types of Material</i>
700 and above	Mild steel
300 to 600	Ductile iron
Below 300	Polyethylene

Protective lining that offers high corrosion resistance is used in mild steel and ductile iron pipes. Their expected service life would be up to 60 years and 40 years for use as fresh water mains and salt water mains respectively.

Polyethylene pipes have good resistance to corrosion. Their average life expectancy can reach 50 years, whether for use as fresh water or salt water mains.

### **Disposable Food Containers**

20. **MISS CHOY SO-YUK** (in Chinese): *President, regarding the use of disposable food containers for lunch by primary and secondary school students, will the Government inform this Council:*

- (a) *of the respective total numbers of disposable food containers used by primary and secondary schools throughout the territory, and the respective amounts of public funds spent on the collection, transportation and disposal of the containers, together with a breakdown by the type of materials of the containers, in each of the past three years;*
- (b) *whether it will review the current situation regarding the use of disposable food containers by schools;*

- (c) *whether it has encouraged schools to use reusable food containers and cutlery; if it has, of the effectiveness of such efforts; if not, the reasons for that; and*
- (d) *whether it will provide financial incentives to encourage schools to use reusable food containers and cutlery?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**  
(in Chinese): President,

- (a) According to the estimate of the Environmental Protection Department (EPD), in the past three years between 2004 and 2006, about 60 million, 47.5 million and 34 million disposable food containers were used by primary schools throughout the territory respectively, with respective net weights of about 1 200 tonnes, 950 tonnes and 680 tonnes. About \$1 million, \$790,000 and \$560,000 were spent on the collection, transportation and disposal of the containers in the past three years respectively. As secondary students usually go out for lunch, the number of disposable food containers produced by secondary schools as a result of catering arrangements is far less than that of primary schools. The above figures showed that there was clearly a declining trend in the use of disposable food containers by schools.
- (b) The EPD has been looking into the use of disposable food containers in schools to understand the various problems and constraints of schools when adopting more environmentally-friendly lunch practices, such as parents' misunderstanding at the initial stage, inadequate space of the school building, and so on. Nevertheless, the use of disposable food containers can be greatly reduced or even completely avoided if proper consideration is given to the physical condition of the school. There are a number of feasible ways to achieve this. For example, if there is adequate space, the school may introduce centralized distribution of meals and washing containers on site. Otherwise, the school may request the supplier to use reusable food containers and collect them for washing after lunch. The EPD will continue to monitor the progress of the implementation of the "green lunch" programme by schools, and encourage schools to overcome their problems and constraints to adopt a more environmentally-friendly lunch practice through publicity and guidance.

- (c) With the efforts of the EPD and the Education and Manpower Bureau in promoting the "green lunch" programme to schools in recent years, more and more schools have adopted a more environmentally-friendly lunch practice. For example, the EPD and the Education and Manpower Bureau have issued relevant guidelines to schools. The EPD and green groups have also jointly conducted surveys, produced publicity leaflets and Announcements of Public Interest (APIs) to promote the "green lunch" programme to schools. In collaboration with the Environmental Campaign Committee, we have organized seminars from time to time and invited school representatives to share their successful experience on the implementation of the "green lunch" programme, with a view to making teaching staff and parents understand the impact of disposable food containers to the Hong Kong environment and recognize that the programme will help raise students' environmental awareness. We are planning to launch a new series of APIs in May to help schools understand various ways of implementing the "green lunch" programme, in a bid to call on more schools to adopt a more environmentally-friendly lunch practice. In the past three years, there was clearly a declining trend in the use of disposable food containers in schools, indicating that the above efforts have been effective.

Education and Manpower Bureau: Guidelines on Meal Arrangements in Schools

<[http://www.emb.gov.hk/FileManager/EN/Content\\_2501/guidelinemealarrangement\\_e.pdf](http://www.emb.gov.hk/FileManager/EN/Content_2501/guidelinemealarrangement_e.pdf)>

EPD: Guideline on the Reduction of Disposable Plastic Foam Food/Drink Containers

<[http://www.epd.gov.hk/epd/english/environmentinhk/waste/guide\\_ref/guide\\_e\\_eps1.html](http://www.epd.gov.hk/epd/english/environmentinhk/waste/guide_ref/guide_e_eps1.html)>

- (d) There is no significant price difference between adopting "green lunch" practices and using disposable food containers and cutlery. Whether a school will use reusable food containers and cutlery or introduce centralized distribution of meals and on-site washing according to the characteristic of the school building, would largely depend on the support of the "green lunch" programme by the

school and parents, as well as the physical condition of the school building. The Environmental Campaign Committee, the EPD and the Education and Manpower Bureau have jointly organized the Hong Kong Green School Award to encourage schools to implement environment management programmes in their schools. Participating schools are assessed on a number of criteria including whether the "green lunch" programme has been introduced. The EPD will continue to encourage more schools to adopt "green lunch" practices which suit their needs, through publicity and education.

## **BILLS**

### **First Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: First Reading.

#### **PATENTS (AMENDMENT) BILL 2007**

#### **IMPORT AND EXPORT (AMENDMENT) BILL 2007**

#### **TSING SHA CONTROL AREA BILL**

#### **ENERGY EFFICIENCY (LABELLING OF PRODUCTS) BILL**

**CLERK** (in Cantonese): Patents (Amendment) Bill 2007

Import and Export (Amendment) Bill 2007

Tsing Sha Control Area Bill

Energy Efficiency (Labelling of Products) Bill.

*Bills read the First time and ordered to be set down for Second Reading pursuant to Rule 53(3) of the Rules of Procedure.*

### **Second Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: Second Reading.

**PATENTS (AMENDMENT) BILL 2007**

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, I move that the Patents (Amendment) Bill 2007 (the Bill) be read the Second time.

The Bill aims to implement a Protocol adopted by the World Trade Organization (WTO) which facilitates its WTO Members' access to generic versions of patented drugs for addressing public health problems. When implemented, the Protocol would enable Hong Kong to import the required drugs swiftly when dealing with public health problems in circumstances of extreme urgency.

According to the existing WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), WTO Members may, subject to certain conditions and requirements, issue a compulsory licence allowing a third party to produce and sell a generic version of a patented drug without the authorization of the patent proprietor of the drug. However, the TRIPS Agreement has a provision requiring that the drug should be predominantly for the supply of the domestic market. As such, WTO Members lacking manufacturing capacities in the pharmaceutical sector face difficulties in making use of the compulsory licensing system to acquire generic drugs. In 2003, the WTO decided to temporarily waive the restrictions under specified circumstances, allowing WTO Members to export generic drugs to other Members. Subsequently, the WTO adopted the Protocol in December 2005 in order to make the temporary waiver a permanent arrangement.

The Protocol has not come into effect yet. It is open for acceptance by WTO Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference of the WTO. The Protocol will take effect upon acceptance by two thirds of the WTO Members.

To implement the Protocol in Hong Kong, we have to amend the Patents Ordinance (Cap. 514). When drafting the Bill, we have ensured that our compulsory licensing system is in line with the requirements under the TRIPS Agreement and the Protocol.

We will only make use of the Protocol to import pharmaceutical products in circumstances of extreme urgency. We propose that the Chief Executive in

Council may, on public health ground, declare a period of extreme urgency in Hong Kong. During such a period, the Director of Health may grant an import compulsory licence for the holder to import and distribute generic drugs without the authorization of the proprietor of the patent of the concerned drug.

Hong Kong may also make use of the Protocol to export generic drugs. If a WTO Member avails itself of the Protocol to import a generic drug, the Director of Health may grant a compulsory licence allowing a local drug manufacturer to make and export the generic drug to the Importing Member without the authorization of the proprietor of the patent of the drug. If the Member importing the drug is not under circumstances of extreme urgency, the manufacturer applying for an export compulsory licence shall, before application, endeavour to obtain the patent proprietor's authorization on reasonable commercial terms and conditions. If the Member importing the drug is under circumstances of extreme urgency, the foregoing requirement would not apply.

In line with the requirements under the Protocol, the Bill contains provisions providing for payment of remuneration to the patent proprietor. According to the Protocol, adequate remuneration should be paid to the patent proprietor at the Exporting Member. If adequate remuneration is paid at the exporting end, no remuneration is required to be paid to the local patent proprietor at the importing end.

In the Bill, we propose that when Hong Kong makes use of the Protocol to export generic drugs, the holder of an export compulsory licence should pay adequate remuneration to the local patent proprietor.

In general, Hong Kong is under no obligation to pay remuneration to the local patent proprietor when importing a pharmaceutical product under the Protocol. However, remuneration should be paid to the local patent proprietor if remuneration is not paid to the patent proprietor at the Exporting Member after the exhaustion of all legal remedies to recover payment of the remuneration at the exporting end. We envisage that this scenario will be extremely rare. Under such exceptional circumstances, we propose that the Government should pay the required remuneration since importing the generic drug is for containing an urgent public health problem in the community. We consider the proposed arrangement reasonable.

As for the amount of the remuneration, we propose that it should be determined on a case-by-case basis by the Director of Health, in consultation with the Director of Intellectual Property. The amount, however, should not exceed a cap. The Bill stipulates a cap equivalent to 4% of the total price paid for the drugs. In drawing up this 4% cap, we have taken into account the practices of other jurisdictions like the European Union, Canada and Switzerland. To allow for flexibility, the Secretary for Commerce, Industry and Technology is empowered in the Bill to vary the cap by way of notice in the Gazette. Where necessary, we will review the propriety of the cap, having regard to the prevailing international practice.

In order to safeguard the interests of the patent proprietors, we have also proposed a review mechanism for aggrieved persons to apply to the Court for review. The Court may make any order as it thinks fit, including determining a remuneration exceeding the aforementioned statutory cap.

Madam President, the implementation of the Protocol will help address public health problems in the world. We intend to notify the WTO of our acceptance of the Protocol after enactment of the Bill. I appeal for Members' support for passage of the Bill so that Hong Kong may work hand in hand with the international community on this public health issue. Moreover, the Bill will enhance our capacity in handling public health crises, in the overall interest of the community.

We have consulted the Panel on Commerce and Industry of the Legislative Council on the key proposals of the Bill. Members present expressed in-principle support for the proposals.

Madam President, with these remarks, I look forward to the early passage of the Bill. Thank you.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Patents (Amendment) Bill 2007 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

**IMPORT AND EXPORT (AMENDMENT) BILL 2007**

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, I move the Second Reading of the Import and Export (Amendment) Bill 2007 (the Bill). The Bill seeks to enable the Chief Executive in Council to make regulations that provide for the lodgement of electronic cargo information in advance.

The Financial Secretary announced in the 2007–2008 Budget the construction of an electronic advance cargo information (e-ACI) system for the customs clearance of road cargoes, with a view to developing trade. With the e-ACI system, all cross-boundary trucks, except those selected for inspection, will enjoy seamless customs clearance at land boundary control points. The Customs and Excise Department (C&ED) will also have more room to facilitate the passage of transshipment cargoes which involve inter-modal transfer. For example, air-land transshipment cargoes may only be subject to customs inspection at either one of the control points, instead of having to go through inspections at both control points under the existing procedure.

International and regional initiatives which ride on electronic customs clearance are emerging among our major trading partners to facilitate and secure the flow of legitimate trade. China also sets out its vision that the Asia-Pacific Economic Co-operation (APEC) should strive to achieve electronic customs clearance at the checkpoints of all APEC economies by 2010. Hence, our initiative is in line with international and regional trends in moving towards electronic customs clearance. It will also strengthen Hong Kong's competitiveness as an international trading centre.

We have consulted and closely liaised with the industry stakeholders involved in the handling of cross-boundary road cargoes. The majority of the stakeholders consulted, including representatives of shippers, freight forwarders, express couriers and cross-boundary truck drivers, welcome early implementation of the electronic system and support the need for legislation.

We propose to amend the Import and Export Ordinance to give the Chief Executive in Council the necessary regulation-making power for requiring the submission of e-ACI in respect of different modes of transport. After the enactment of the Bill, we shall make the Import and Export (Electronic Cargo

Information) Regulation to tie in with the roll-out of the e-ACI system for road cargoes.

We have provided this Council with the draft Regulation to let Members and the public know the key parameters of our proposed legislative framework. These key parameters include:

- (a) a transitional period of 18 months during which the new mode of submitting e-ACI for road cargoes will be optional. The stakeholders concerned will be required to make the relevant e-ACI submissions after the end of the transitional period;
- (b) the principle that the level of penalty should be commensurate with the nature of non-compliance with the statutory obligations under the electronic system. We shall also provide defence or exemption provisions on justifiable grounds; and
- (c) vesting the Commissioner of Customs and Excise with the power to waive the e-ACI reporting requirements in emergency circumstances. In case of system failure, the C&ED will implement a contingency plan to ensure that any such incident would not cause traffic confusion nor compromise the integrity of customs control at the land boundary.

Subject to this Council's approval of our legislative proposal and the funding proposal to be submitted later, we plan to roll out the e-ACI system for road cargoes in 2009 and commence an 18-month transitional period. We aim to mandate the e-ACI submissions for road cargoes in early 2011.

I wish to emphasize that the transitional period aims to provide all parties concerned with adequate time to prepare themselves for e-ACI submissions. We plan to provide seminars on the new workflow next year and hands-on training throughout the transitional period. We shall also introduce measures to encourage traders who frequently convey cargoes by road to submit e-ACI at the early stage of the transitional period.

With these remarks, Madam President, I look forward to the passage of the Bill after Members' scrutiny. Thank you.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Import and Export (Amendment) Bill 2007 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

## **TSING SHA CONTROL AREA BILL**

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): President, I move that the Tsing Sha Control Area Bill be read the Second time.

Route 8 is a strategic road linking Sha Tin and North Lantau. The section of Route 8 linking Tsing Yi and North Lantau, which came into operation in 1997, is part of the Tsing Ma Control Area (TMCA). The construction of Route 8 (Tsing Yi and Sha Tin section) is underway and will be commissioned in phases, that is, in late 2007 and early 2008.

For effective and efficient traffic control and incident management, the section of Route 8 between Tsing Yi and Sha Tin will form one single control area — the Tsing Sha Control Area (TSCA). On completion, the TSCA will provide a direct road link between Chek Lap Kok and Northeast New Territories via Tsing Yi and Cheung Sha Wan. It will also provide additional road capacity to cope with the increasing traffic along the Lion Rock Tunnel, Tate's Cairn Tunnel, Shing Mun Tunnels, Cheung Tsing Highway, Cheung Tsing Tunnel and Tsing Kwai Highway.

The management, operation and maintenance of the TSCA will be outsourced to an operator through open tender, similar to the arrangement for the TMCA. The main object of the Bill is to provide for the management, operation and maintenance of the TSCA and the regulation of traffic within the TSCA. Similar arrangements have been made in respect of the TMCA and other government tunnels and have worked well.

The Bill provides that the Road Traffic Ordinance and the Road Traffic (Driving-offence Points) Ordinance shall generally be applicable to the TSCA. The Bill empowers the Commissioner for Transport and the Director of Lands to make arrangements in respect of the boundaries and the plans of TSCA and such

matters. Similar to the provisions in the Tsing Ma Control Area Ordinance, the Bill controls and regulates vehicular and passenger traffic within the TSCA and to provide for the appointment and powers of authorized officers. In addition, the Bill empowers the Chief Executive in Council to make regulations for the purposes of prescribing and providing for the payment of tolls and other fees and charges. It also empowers the Secretary for the Environment, Transport and Works to make detailed regulations in relation to the regulation and control of the TSCA. The regulations will be enacted after the passage of the Bill.

President, the Administration explained the main clauses of the Bill to members of the Legislative Council Panel on Transport on 26 January 2007. Members did not object to the introduction of the Bill to the Legislative Council. I hope Members will support the passage of the Bill to tie in with the commissioning of the TSCA.

Thank you, President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Tsing Sha Control Area Bill be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

## **ENERGY EFFICIENCY (LABELLING OF PRODUCTS) BILL**

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): President, I move that the Energy Efficiency (Labelling of Products) Bill be read the Second time.

The main object of the Bill is to provide energy efficiency information on energy-consuming products to consumers by establishing a mandatory Energy Efficiency Labelling Scheme (EELS) through legislation. It is hoped that this would encourage the public to use energy efficient products.

Total energy consumption at end-use level in Hong Kong grew at an average rate of 1.2% per annum in the last decade. In 2004, the total electricity consumption in Hong Kong was 39 200 Gigawatt hours (GWh), of which 9 500

GWh (about 24%) were used by household appliances. Significant energy saving will be achieved by the use of energy efficient electrical appliances which help reduce the emission of greenhouse gases and other air pollutants.

The Electrical and Mechanical Services Department (EMSD) has been running a voluntary EELS since 1995. Up to now 18 kinds of energy-consuming products are included in the EELS. While the EMSD will continue to promote this voluntary scheme to the public and the trade, significant improvement in market penetration of the voluntary scheme cannot be achieved simply by promotional and publicity efforts. Therefore, we must enact legislation to implement a mandatory labelling scheme to offer comprehensive energy efficiency information on specified products to consumers so that they can choose products with greater energy efficiency.

We propose to include room air conditioners, refrigerating appliances and compact fluorescent lamps in the initial phase of the mandatory EELS. The total electricity consumption of these products in Hong Kong accounts for more than 70% of the annual electricity consumption in the domestic sector. They have been covered by the voluntary EELS since the early stages and have the highest market penetration rates.

We launched a three-month public consultation exercise in July 2005 to gauge public views on the proposed mandatory labelling scheme. Most of the views collected show support for the mandatory labelling scheme. It is recognized that the scheme will make energy consumption more efficient and is moving in the right direction. We also consulted the Legislative Council Panel on Environmental Affairs and members did not object to the legislative proposals. Other relevant bodies and trade representatives were also consulted on these proposals and in-principle support was shown. It was generally agreed that the scheme could improve energy efficiency.

The Government will continue to expand the scope of the mandatory EELS to cover other electrical appliances, taking into account the results of the initial phase of the mandatory EELS and the corresponding energy consumption reduction achievement. We will also duly consult the community and the relevant trade on our future expansion proposals.

President, we call for energy conservation to improve air quality and reduce the emission of greenhouse gases. The proposed scheme is an important

measure to achieve this end. The mandatory EELS can encourage the public to choose products with greater energy efficiency. I hope Members can support this Bill.

Thank you, President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Energy Efficiency (Labelling of Products) Bill be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

### **Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Appropriation Bill 2007.

### **APPROPRIATION BILL 2007**

#### **Resumption of debate on Second Reading which was moved on 28 February 2007**

**PRESIDENT** (in Cantonese): The public officers concerned will speak, after which the Financial Secretary will reply.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): President, I thank Members for expressing a lot of valuable views relating to the policy areas of the Environment, Transport and Works Bureau. Here, I would like to respond to the issues raised by Members.

On infrastructure projects, many Members said during the debate that they supported expediting infrastructure projects and hoped that by implementing various works projects, the employment situation in the construction industry could see some improvement. President, we fully agree with the demands raised by Members and the general public.

The Administration is committed to taking forward justified projects under the Capital Works Programme to meet the needs of society, promote Hong Kong's future economic development and create more job opportunities for the local construction industry. In this year's Budget, the Financial Secretary has again pledged to set aside on average \$29.2 billion a year in the next few years for meeting expenditure on infrastructure projects.

In this regard, I wish to add the following:

Expenditure on capital works projects will inevitably fluctuate from year to year in tandem with the development pace of the works executed. This year, since a number of mega infrastructure projects such as the Hong Kong Disneyland Phase 1, the Deep Bay Link and the Shenzhen Western Corridor have been completed while the construction of the next batch of mega projects such as the Wan Chai Development Phase II, the Central-Wan Chai Bypass and the Kai Tak Development has not yet started, we are now in a disjointed period, therefore, the total expenditure on capital works projects for this year will be less.

As regards why some new works projects cannot be launched speedily, we have done some analysis. I believe all Members will know that there are four categories under the Capital Works Programme, namely, Category A, Category B, Category C and Category D, which reflect the progress of each works project and their funding position.

Before a project item can be upgraded from Category B to Category A, the works departments must complete the preparatory work for the project, including design, statutory gazettal, public consultation, environmental impact assessment and site investigation. When a project is ready for tender, it will be submitted to the Public Works Subcommittee (PWSC) of the Legislative Council for approval and approval will be given by the Finance Committee (FC) to upgrade it to Category A, after which work will commence immediately. In the past few years, the time needed to upgrade some Category B projects to Category A has become longer and longer. According to our information, the planning and construction of the airport core projects took only about nine years, that is, from 1989 to 1998, and the planning and construction of a number of railways including the Tseung Kwan O Line, the West Rail, the Tsim Sha Tsui Extension Project and the Ma On Shan Rail took only 11 years, that is, from 1994 to 2005,

and this is shorter than the time it takes for several major works projects still under planning. The Kai Tak Development, the planning of which commenced in 1993, and the Central-Wan Chai Bypass and the Wan Chai Development Phase II, the planning of which commenced in 1995, all take a longer time.

The reasons for the increasing difficulties in launching major works projects are rather complicated and they include the need to consult members of local communities and relevant groups thoroughly. Moreover, these consultation exercises may entail making changes to the details of the works projects, thus lengthening the time required for making preparations and going through the statutory procedures. We appreciate the public's hope that there can be greater participation in and more detailed discussions on public works projects and this is absolutely a good sign because only in this way can the completed facilities meet the aspirations of society. However, I also hope Members can understand that in this process, the time it takes the projects to move forward from planning to completion will inevitably be lengthened, so the public will not be able to enjoy the benefits of the new facilities as early as possible.

Achieving the best possible balance between taking on board a wide array of views voiced by various parties and implementing the projects speedily is indeed no easy task. We will make the following proposals in the hope of eliciting better ideas from Members and engaging in discussions with them.

First, we hope that the public will be comprehensively consulted as early as possible. When a capital works project is still at an early stage of planning, the relevant Policy Bureaux and departments will provide the details and consult the public on such matters as the aim, scope and effects of the project early, in the hope of reaching a consensus on such matters as the need for the project and its timetable. I believe people will surely have different views in this process and may even have heated discussions. All these are healthy developments. The important thing is that concerted efforts will be made by all parties concerned to ensure the speedy delivery of the works project after a consensus has been reached by a majority of people. The details of the project should be modified only when absolutely necessary because sometimes, some apparently simple modifications may entail other extensive changes as well as a large number of changes in design, as a result, the progress of the whole project will be delayed.

Apart from the Category A works projects now under construction or soon to be launched, the Government has also made provisions for 300 Category B projects. If these works projects can all be launched as scheduled, the expenditure involved in the next five years is about \$80 billion.

If we look only at the four mega projects under planning, the Central–Wan Chai Bypass will cost \$20.6 billion, the Central Kowloon Route, \$12.5 billion, the Kai Tak Development, \$9.8 billion and the Wan Chai Development Phase II, \$4.6 billion. The funds involved already amounts to \$47.5 billion and these projects will create 14 000 new jobs. We hope that all the parties concerned, including Members, the public and the Government, can reach a consensus as soon as possible, so that these works projects can commence.

Secondly, we propose further streamlining the process within the Government to expedite project delivery. We have reviewed the planning and tender procedures comprehensively, implemented a number of streamlining measures and enhanced co-ordination and mutual understanding among departments to speed up the selection and consideration of contracts, as well as inviting tenders at the same time as the FC considers the funding applications.

Thirdly, we hope that the financial ceiling of \$15 million for each minor works project can be raised. At the Special FC meetings, some Members suggested that the Government should consider adopting a contingency measure by preparing for submission for reserve projects, so that underspending resulting from delays in major projects can be offset. We appreciate Members' concern, however, it must be pointed out that the preparation of major projects involve substantial resources such as conducting feasibility studies, detailed design, statutory gazettal, public consultation, environmental impact assessment and land resumption, so it is not possible to make preparations as contingency for measures unforeseen circumstances. Moreover, a large amount of resources will have been wasted if the projects on the "reserve list" are ultimately not implemented or if there are changing circumstances or new developments. This will also stretch the manpower for implementing major projects in the relevant departments, so I hope Members can understand the difficulties in implementing this proposal.

However, Members' proposal is absolutely feasible if applied to the implementation of minor works projects. At present, minor works projects

refer to those the cost of which is less than \$15 million, that is, Category D projects. Some examples are:

- (a) Subhead 3101GX, for minor building works, fitting out works and alternations, additions and improvement works;
- (b) Subhead 4100DX, for minor drainage improvement works; and
- (c) Subhead 7016CX, for district-based minor works projects implemented by District Councils.

In order to further improve the spending on minor works projects, we propose that the financial ceiling of the delegated power of approving Category D items be increased from \$15 million to \$30 million to enable more minor works projects of a larger scale in terms of cost to be carried out more quickly and efficiently. If a works project is carried out under the Category D route, it can be launched within half a year; in comparison, it will normally take two and a half years for a similar project to go through the CWP upgrading route starting from the planning stage. In fact, this reform targeting Category D projects will improve the implementation of works projects significantly.

If this proposal is implemented, it will significantly improve the flexibility of the Government in planning minor works projects according to the needs of society and boost our ability to prepare a list of reserve projects as mentioned earlier on.

Of course, we understand that given the expenditure of minor works projects, they can hardly compare with major works projects in their ability to boost the overall works expenditure. However, I believe this proposal can still bring about some increase. Moreover, since it is necessary to hire more workers when carrying out minor works projects, this will have some positive effect on the creation of job opportunities in the construction industry.

Moreover, by adjusting the ceiling of expenditure upwards, the FC and the PWSC can focus on important works projects requiring greater amounts of works expenditure. If Members think that it is worthwhile to consider this proposal further, we will be happy to submit more detailed information to the PWSC and hope that the FC will approve this proposal.

Looking ahead, we hope that with the support of the Legislative Council and various sectors in society, we can do our utmost to take forward justified works projects, so as to promote the future development of Hong Kong, improve the environment in Hong Kong and create more job opportunities for the construction industry.

On the policy on environmental protection, we also notice that a lot of Members are very concerned about environmental protection. First of all, we have had a lot of discussions on the "polluter pays" principle.

For many years, although a consumption-led economy has speeded up commercial development in a society, it has also exacerbated the problems caused by solid waste, effluents and emissions. In the early 1980s, the United Nations established a Select Committee to discuss the issue of solid waste and in 1992, in a summit on the environment and development convened in Brazil, the first extensive discussion was held on adopting the "polluter pays" principle as a solution and this was approved. Simply put, the public will inevitably create some pollution when using resources, however, they do not have to bear any responsibility and it is our environment that falls victim to this. However, through the "polluter pays" principle, not only is it possible to assign the costs of addressing pollution fairly, it is also possible to rectify abuses and the over-consumption of resources by means of financial incentives.

A sewage service charge was introduced in Hong Kong in 1995, the first item that adopts the "polluter pays" principle. The result of the Construction Waste Disposal Charging Scheme, which was introduced in 2005, was satisfactory. One year after the introduction of the scheme, the total amount of construction waste fell by 25% and the amount of construction waste disposed of at landfills also fell by 40%.

To tackle the increasingly pressing and serious municipal waste problem, we published a number of measures in "A Policy Framework for the Management of Municipal Waste (2005-2014)". One year after the implementation of these measures, we achieved the target recovery rate of 45% three years early. Unfortunately, as a result of a vibrant economy, the total amount of commercial and industrial waste has increased, so the total amount of municipal waste has increased instead of decreasing. This is disappointing. In view of this, the Government has to implement producer-responsibility schemes

according to the "polluter pays" principle. We will announce a charging scheme for plastic shopping bags shortly, with a view to creating a financial incentive to reduce the use of plastic shopping bags in accordance with the "polluter pays" principle and hence reduce the pressure on landfills. We hope to submit, after securing the support of the Legislative Council and the public, a bill on the details of the charging scheme and those of producer-responsibility schemes to the Legislative Council for scrutiny.

Secondly, the Harbour Area Treatment Scheme (HATS). We have also mentioned just now that a sewage service charge has been levied since 1995. In order to improve water quality in Hong Kong and ensure public hygiene, the Government plans to invest about \$20 billion in new sewerage and sewage treatment projects in the next 10 years. One of the major projects is the HATS Stage 2A. The project cost is estimated to be \$8 billion and 2 400 job opportunities can be created. Under the "polluter pays" principle, the operational cost of the new sewage treatment facility has to be recovered through sewage service charge. The Government proposes that the sewage charge be adjusted in a modest and incremental manner over a 10-year period to provide sustainable, stable and predictable funding support to the operation of these important facilities. When commissioned in 2014, it will further improve water quality in the Victoria Harbour and we estimate that the bacterial levels in the main harbour area will be reduced by 90%, so we will finally be able to resurrect the annual cross-harbour swim and hold other aquatic activities in the Victoria Harbour again. Legislation on the proposed increases in the sewage charge is now before the Legislative Council.

Some people consider that the HATS should incorporate a biological treatment process, therefore, they request the Government to set a timetable for the implementation of the HATS Stage 2B as soon as possible. The Government fully agrees that there is a need for biological treatment, however, we must point out that given the land constraint, it is no simple matter to use biological sewage treatment technology to handle millions of tonnes of wastewater discharged daily and we have to overcome problems in convergence and other technical difficulties. Since the population growth and the increase in the amount of sewage in Hong Kong is slower than earlier forecasts and the consequential water quality impact will be less than predicted, we will have more time to make preparations, including beginning the relevant procedures to secure enough land for the construction and operation of Stage 2B. Meanwhile, we

will also pay close attention to the latest developments in biological sewage treatment technology because this kind of technology is constantly in progress and we will usually study successful overseas experience to ensure good results in our application. After a review has been completed in 2010-2011, we will decide on the specifics such as the timetable for project implementation, the scale and operational costs according to the data obtained. All along, the Legislative Council has expressed support for the "polluter pays" principle on a number of occasions. I sincerely hope that the legislation on the proposed increases in sewage charge can be passed smoothly. After the proposed adjustment has been approved, we will make an application to the Legislative Council for funding for the HATS Stage 2A as soon as possible, so as to launch the project as scheduled.

The third area, which is one of great concern to all, is the air quality in Hong Kong. The Government is determined to combat the air pollution problem and has placed air quality improvement on the top of our agenda.

A Member recently cited a report of The Hong Kong University of Science and Technology (HKUST), saying that for 53% of the time, air quality in Hong Kong is affected by local sources. The report also points out that in terms of mass concentration, regional sources from the Pearl River Delta Economic Zone account for approximately 60% of the pollution level in the HKSAR in annual average terms but that this percentage would rise to 70% in wintertime.

Such findings of HKUST are consistent with the findings of the Study of Air Quality in the Pearl River Delta Region published by the Environmental Protection Department (EPD) in 2002. The EPD's monitoring data indicates that air pollution levels were much higher in winter than in summer. There were a total of 55 days in January and only nine days in June with roadside air pollution index exceeding 100 in the seven years between 1999 and 2006.

Therefore, to effectively reduce the high air pollution days, apart from reducing local emissions, we must also work in collaboration with Guangdong authorities to reduce the regional emission of pollutants. In fact, in the past few years, the efforts of the Government in reducing local emissions have already yielded concrete results. The total amounts of nitrogen oxides, respirable suspended particulates and volatile organic compounds generated in Hong Kong in 2005 were reduced by 15%, 36% and 26% respectively compared to 1997.

Only sulphur dioxide has seen an increase in the last few years owing to the increase in emissions from power plants. We have imposed emission caps on the power companies since 2005 and will progressively tighten the caps to ensure that the emission reduction targets can all be achieved by 2010.

We introduced four new measures on 1 April:

- (a) requiring local pre-Euro long-idling heavy-duty diesel vehicles to be installed with emission reduction devices;
- (b) controlling products containing volatile organic compounds;
- (c) granting \$3.2 billion to encourage car owners to replace pre-Euro and Euro I commercial diesel vehicles with Euro IV models; and
- (d) providing tax relief to promote environmentally-friendly cars.

The Energy Efficiency (Labelling of Products) Bill has been tabled to the Legislative Council for First Reading and commencement of the Second Reading process just now. The relevant mandatory energy efficiency labelling scheme will give the public clearer information in purchasing energy-efficient household electrical appliances, so as to reduce electricity consumption and hence, emissions from electricity generation.

We expect to start in the second quarter of this year the detailed study on the review of Hong Kong's Air Quality Objectives and the public consultation on a legislative ban on idling vehicles. We are confident that these measures will further improve air quality in Hong Kong, particularly roadside air quality.

On reducing emission from regional sources, the Governments of Hong Kong and Guangdong will continue to work closely in implementing the Pearl River Delta Regional Air Quality Management Plan, with a view to achieving the jointly agreed emission reduction targets by 2010. The implementation framework of the Emissions Trading Pilot Scheme for Thermal Power Plants in the PRD Region was announced on January 30. The environmental protection authorities of the two sides are now promoting the Pilot Scheme among thermal power plants in the Pearl River Delta Region, including Hong Kong.

In the next few years, after Guangdong and Hong Kong have put in place various emission reduction measures as planned and scheduled, we are confident that local and regional air pollution will see improvements.

As regards transportation, I also wish to respond to Members' views.

On railway development, the Government has committed a large amount of resources to developing a railway network. After the commissioning of the MTR Tseung Kwan O Extension, the West Rail, the Tsim Sha Tsui Extension and the Ma On Shan Rail Link of the Kowloon-Canton Railway Corporation (KCRC), and the Disneyland Resort Line of the MTR were commissioned one after another between 2003 and 2005. Two new railways including the Sheung Shui to Lok Ma Chau Spur Line and the Kowloon Southern Link are now under construction, scheduled for completion this year and in 2009 respectively. Railway has become the backbone of passenger transport in Hong Kong, providing a fast and convenient mass transit system conducive to improving the environment in Hong Kong.

The Sheung Shui to Lok Ma Chau Spur Line will provide a new rail passenger boundary crossing and will greatly ease the congestion at the Lo Wu control point on commissioning. The Hong Kong Government will continue to maintain close communication with the Shenzhen Municipal Government to ensure the smooth commissioning of the spur line and the new control points in mid-2007. The construction cost of the Lok Ma Chau Spur Line is about \$10 billion.

Construction works for the Kowloon Southern Link, costing \$8 billion and connecting the West Rail Nam Cheong Station with the East Rail East Tsim Sha Tsui Station, started in 2005 and are scheduled for completion by 2009. On completion, the East Rail and West Rail will become connected and by then, residents in the Northwest New Territories will be able to make use of a railway service that takes them to the urban area direct.

On the planning for railway, the "Railway Development Strategy 2000" published in 2000 provides a blueprint for Hong Kong's rail network expansion. This involves the construction of a number of new passenger rail projects in Hong Kong. Among them, the Kowloon Southern Link is now under construction while other railway projects including the West Hong Kong Island Line, the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, the Northern Link (NOL), the Shatin to Central Link (SCL) and the South Hong Kong Island Line are all under active planning.

In August last year, the MTR Corporation Limited submitted the West Island Line (WIL) Revised Project Proposal to the Government. Various government departments are now actively considering it and have held inter-departmental meetings on the proposal to discuss the details and the ancillary arrangements in the WIL Revised Project Proposal. The consideration has reached the final stage and we hope that the proposal will be gazetted later this year to formally consult the public on the WIL. The construction cost of this project will be some \$8 billion.

The NOL extending from the existing Kam Sheung Station of the West Rail to Lok Ma Chau Station will provide a direct railway service from the Western New Territories to the boundary. In addition, an interchange station of the NOL will be provided near Chau Tau to facilitate passenger transfer to the Lok Ma Chau Spur Line and provide access to Sheung Shui and various stations of the East Rail. On completion of the Kowloon Southern Link and the NOL, the East Rail and the West Rail will form a complete rail network with a passing loop.

On the SCL, the Government is examining the Kowloon-Canton Railway Corporation's proposal on the proposed SCL and the proposed SCL scheme under the merger of the two railway corporations. As regards the South Island Line, the Transport Department has commissioned a consultancy to evaluate the effects of this railway on the operation of other modes of public transport. In view of the results of the study, we will keep in touch with the relevant public transport service operators, the Southern District Council and members of local communities, in order to determine expeditiously the future direction of the South Island Line.

With the successive completion of various railway projects, not only will more job opportunities be created, the railway network in Hong Kong will also see further improvement and an efficient, comfortable, reliable and environmentally-friendly mass transit system will be provided to the public. Meanwhile, the links between Hong Kong and the Mainland will also be strengthened, thus consolidating Hong Kong's economic status and promoting Hong Kong's development. We are now deliberating the Rail Merger Bill with the Legislative Council. We look forward to the early completion of this task in this Session, so that railway development can be taken to a new level.

Thank you, President.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, just as in the past, Members are very much concerned about how the Health, Welfare and Food Bureau allocates its resources and the questions they asked the Health, Welfare and Food Bureau numbered at 739 this year. Among them, 307 questions are related to social welfare. Some Members pointed out that in 2006-2007, the expenditure on welfare had been less than the Estimate and a considerable amount in the shortfall related to the expenditure on Comprehensive Social Security Allowance (CSSA). Here, I would like to do some clarification.

According to the Revised Estimate for 2006-2007, the expenditure on CSSA was \$17.881 billion, which was lower than the original Estimate of \$18.841 billion. The main reason is that as the Hong Kong economy has recorded sustained growth, the unemployment situation has also seen some improvement. The number of CSSA cases decreased from an estimated 292 800 cases to 280 300 cases in the Revised Estimate and the decrease was 4.3%. Meanwhile, the measure taken by the Social Welfare Department (SWD) to boost the Support for Self-reliance Scheme has also yielded results. As of March this year, the number of people who managed to leave the CSSA net or whose cases were reclassified from unemployment cases as low-income cases totalled about 61 000 and the result is encouraging.

Looking ahead at 2007-2008, the Financial Secretary has allocated a great deal of new resources to the Health, Welfare and Food Bureau in the Budget. \$3.1 billion is allocated for social welfare, \$700 million for health and close to \$500 million for food and environmental hygiene.

In respect of social welfare services, Members are particularly concerned about the services for the elderly. I wish to give a detailed account on the allocation of resources and the new measures in this regard. First, I wish to respond to Members' views on the services for the elderly. "Active ageing", "ageing in the community", "continuum of care" and "targeting resources at elders most in need" are the underlying principles of the Government's elderly policy. We affirm the contribution made by the elderly to society and through the non-contributory social security and services for the elderly heavily subsidized by the Government, it is possible for them to lead a peaceful life in old age.

The expenditure required for the provision of various subsidized elderly services is estimated to be about \$32.5 billion in 2007-08, which will be 5.5%

higher than the 2006-2007 Revised Estimate. In 2007-2008, the Government's estimated expenditure on social security for the elderly, excluding public housing and public health services, will amount to \$16 billion, representing an increase of 3.7% compared with the 2006-2007 Revised Estimate.

Here, I have to stress that the Government's commitment to the elderly has never diminished. An additional funding of \$150 million is provided in the 2007-2008 Budget to enhance the support services for the elderly, which include:

- an additional \$38 million in recurrent public expenditure to 156 elderly centres to enhance their outreach programmes, so as to encourage and assist more elderly singletons, particularly the unidentified ones, to develop their social life, and provide referral and supporting services to those in need;
- allocating \$96 million in the next four years to implement a trial scheme in two districts to provide one-stop support services to elderly dischargees who have difficulty taking care of themselves; and
- an additional \$16 million in recurrent public expenditure to provide more subsidized residential care places in new purpose-built residential care homes for the elderly. As the population ages, the demand for subsidized residential care places for the elderly will increase. The Commission on Poverty and the Elderly Commission will continue to explore ways of responding to the challenge effectively.

Apart from the foregoing new measures, we will continue to implement other measures to support elderly people in need.

On assisting elderly people living in local communities, we have increased the number of places for home-based community care services in 2006-2007. In 2007-2008, we will continue to pay close attention to the demand for home care services and will provide an additional 80 day care places for the elderly.

In response to the demand for subsidized residential care homes for the elderly, we will provide a total of 812 additional places in this financial year and

the next, including the provision of 662 subsidized places in 2007-2008. Of these places, 450 will be purchased from private residential care homes for the elderly, and an additional provision of \$16 million, as mentioned just now, will be used to provide 150 additional subsidized residential care places in 2008-2009.

Some Members suggested that the Government should increase the number of subsidized residential care places substantially, so as to reduce the waiting time. In fact, the waiting time for subsidized places under the present Enhanced Bought Place Scheme is about nine months, which is shorter than the waiting time for subvented or contract homes. By increasing the number of bought places by 450, more elderly people can be assigned subsidized places within a shorter time, and this will be conducive to raising the standard of private homes participating in the scheme.

However, we have to understand that as the population is ageing, it is not possible to meet in the long run all demands effectively by relying on the subsidized residential care services provided by the Government alone. The Government will continue to encourage families to share the responsibility of taking care of elderly people, and foster at the same time an environment conducive to development, so that the market for elderly services will become more diversified and more choices apart from subsidized services are available to people with the means, so that resources can be focused on assisting more elderly people in dire need.

On social security, I wish to give an explanation on the disregarded earnings arrangement in particular. This arrangement is designed to encourage recipients to seek employment and become self-reliant, in a bid to achieve the dual objectives of improving their living standard while enriching their working experience and enhancing their capacity to lead a financially independent life. We must be very cautious when determining the amount of CSSA payment and the maximum level of disregarded earnings. On the one hand, we have to encourage CSSA recipients capable of working to improve their quality of life, and on the other, we have to avoid the scenario of CSSA payment being higher than the earnings of self-reliant people by all means. We must strike a balance between the two, otherwise, it would not be possible to encourage recipients to become self-reliant.

We have completed the review of the disregarded earnings arrangement and propose to raise the "no-deduction" limit for disregarded earnings from \$600

to \$800 and relax the criteria for allowing CSSA recipients to be eligible for disregarded earnings from not less than three months to not less than two months. It is estimated that these two proposals can benefit 19 800 recipients and the annual expenditure required will be around \$30 million.

A Member suggested raising the maximum level of disregarded earnings substantially from \$2,500 to \$3,500. Under the existing CSSA scheme, the average CSSA monthly payment for a four-member family is \$9,344. According to the suggestion, if one member from such a family holds a job, under the disregarded earnings arrangement, the family income will be as high as \$12,844. This level of income is far higher than that of a low-income four-member family, which is \$9,500. This will also deviate from the aim of the CSSA scheme in providing support to people in need to meet their basic needs.

Another view holds that the rule of allowing no disregarded earnings for recipients who have been on CSSA for less than three months should be further relaxed or even abolished altogether. We do not agree with this suggestion as this may make some of the people considered to have sufficient means to meet their basic needs give up their jobs temporarily or defer seeking employment, thus encouraging them to rely on welfare support.

Next, I will introduce other new measures relating to social welfare and women's interests:

- we will provide one additional month of standard rate CSSA payments for CSSA recipients and one additional month of allowance for Social Security Allowance (SSA) recipients. This proposal will benefit over 520 000 CSSA recipients and 580 000 SSA recipients and cost the Government about \$1.5 billion;
- on combating domestic violence, in the coming year, we will allocate an additional \$26 million to reinforce the manpower of social workers in the SWD, to enhance the SWD's 24-hour hotline, to strengthen the service of the refuge centres for women and clinical psychological support and to set up a new crisis intervention and support centre to get in touch with high-risk families actively and effect early intervention into their problems;

- on child care services, we understand that different families have varied child care needs. We will allocate additional resources to enhance the development of more flexible child care services, such as day small group home service, day foster care service and mutual help child care centres service to provide more effective assistance to families with young children;
- on rehabilitation services, we will allocate an additional \$52 million to provide 200 more places in early education and training centre and special child care centres for children with disabilities. We will also provide 340 more places in residential cum day services for adults with disabilities. In addition, in order to further promote mental health, we will allocate another \$20 million to implement a new Community Mental Health Intervention Project to provide early, appropriate and outreaching intervention to persons with suspected mental health problems in the community; and
- In promoting women's interests, we will allocate about \$10 million to fund the Women's Commission in implementing the Capacity Building Mileage Programme over the next three years to encourage women to pursue lifelong learning.

On medical care, starting from last year, the Government undertook to increase the annual recurrent funding to the Hospital Authority (HA) by about \$300 million for three successive years, that is, the funding was increased by about \$300 million last year and the incremental increase will be \$600 million this year, whereas from next year, an additional annual funding of \$900 million will be allocated, so that the HA can conduct a comprehensive assessment of its service costs and rationalize its internal resource allocation mechanism in the context of a more relaxed financial situation, so as to make preparations for its long-term financial arrangements after the financial year 2009-2010.

In addition, the Government will allocate an additional \$390 million to the HA this year for the procurement of medical equipment and information technology systems. In this financial year, the HA can also make use of the grant of \$300 million allocated by the Government to the Samaritan Fund in 2006-2007.

I hope the HA will deploy these new resources flexibly to achieve budget balance in 2007-2008.

Next, I will highlight other new resources and major new initiatives provided in the Budget to improve the quality of health care services:

- we have committed \$230 million to raising the quality of medical services provided by the HA, including more extensive use of new cancer drugs, expansion of radiotherapy services and additional provision for haemodialysis, enhancing psychiatric outreach attendances, the phased opening of the redeveloped Pok Oi Hospital and the Rehabilitation Block of Tuen Mun Hospital and strengthening the prevention and control of poisoning;
- allocating \$40 million to strengthen health measures at port and Immigration Control Points;
- allocating \$19 million to promote a no-smoking culture and related enforcement actions; and
- allocating \$10 million to enhance the other services provided by the Department of Health, including controlling the supply and use of medical devices and poisoning prevention and control.

On food safety and environmental hygiene, the new initiatives we will put in place include:

- enacting a food safety law to provide for the registration of importers of food products and traders, empower the authorities to make orders to prohibit sale of unsafe food and bring into the regulatory ambit such food as farmed aquatic produce and vegetables;
- reviewing the work strategy and future direction of the Centre for Food Safety, further implementing initiatives for food safety and stepping up efforts in disseminating food safety information to the public;
- continuing to step up preventive measures against avian influenza, including limiting the population of local poultry flock, banning backyard poultry keeping, introducing amendment legislation to

provide for the registration of poultry egg importers and stepping up the surveillance on illegally imported birds;

- continuing with the preparations to set up a poultry slaughtering and processing plant to implement the policy of segregating live poultry from customers. After tabling a bill on regulation of the plant to the Legislative Council and completing the environmental impact assessment, we will invite private organizations to bid for the development of the plant; and
- through the Committee on Sustainable Fisheries formed last year, to study the long-term direction and goals for the local fisheries industry, the strategy for sustaining the development of the industry and other possibilities.

Lastly, I wish to thank Members for their concern for the work of the Health, Welfare and Food Bureau. Some time ago, we spent four hours discussing the work of the Bureau in the Finance Committee and Members offered a lot of advice, thus we have benefited a great deal from it. I hope Members will continue to support our work by passing the Appropriation Bill today. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now invite the Financial Secretary to reply.

**FINANCIAL SECRETARY** (in Cantonese): Madam President, I would like to extend my heartfelt thanks to Honourable Members for the valuable views they have expressed on the 2007–2008 Budget.

The main objective of this year's Budget is to contribute to the long-term economic development, social harmony and stability of Hong Kong under the policy direction of "revitalizing the economy, promoting employment and improving people's livelihood". The Budget has put forward directions for Hong Kong's long-term development as well as measures to improve people's livelihood. By adopting a two-pronged approach, we will, on the one hand, provide tax concessions to reduce the burden of taxpayers and, on the other, continue to implement various measures actively to support the disadvantaged and help them achieve self-reliance and improve their livelihood.

Three quarters of the tax relief measures proposed in the Budget are one-off, and the remainder are recurrent measures. This arrangement both follows the principle of prudent management of public finances and leaves wealth with the community where affordable, while providing some headroom for the next Government. I am glad that the community generally supports these arrangements and measures.

### *Economic Development*

During the debate in late March, some Members criticized this Budget as lacking in direction for long-term development. I do not agree with this and consider such criticism unfair. In making every policy or decision, we always have the well-being of the citizens and long-term interests of Hong Kong at heart. Economic development is a continual process and the Government has striven all along to enhance Hong Kong's competitiveness on all fronts, taking into account our various long-term development needs. In addition, Hong Kong is a market-oriented free economy. The Government's role is to provide the market with a sound regulatory framework and efficient infrastructure and create a favourable environment in which all businesses may flourish.

The Budget has clearly set out the directions and constituents for Hong Kong's sustained economic development. We must keep moving towards high value-added production and a knowledge-based economy. We should reinforce our competitive edge by vigorously developing our financial services, trade, logistics and tourism industries, continue to improve our business environment and promote fair competition. At the same time, we need to create an environment conducive to a knowledge-based economy by pooling talent, encouraging creative industries and facilitating research and development.

As I mentioned in the Budget speech, furthering our economic integration with the Mainland is the key to Hong Kong's development. We should grasp the present opportunities and, with our advantage in having the Mainland as our hinterland, coupled with our own international outlook, in accordance with the principle of a mutually-beneficial partnership, bring into full play our competitive edge as the international centre providing services to the mainland market. Take financial services as an example. We should seize the opportunities now presented by the Mainland's pressing demand for quality financial services. Following the principles of complementarity, co-operation and interaction, we can help enhance the efficiency of financial intermediation in

the Mainland and facilitate reform of the Mainland's financial system, thereby developing Hong Kong into a world-class financial centre for our nation.

Furthermore, we should not judge the Government's long-term development blueprint by the Budget of a single year. The Chief Executive's policy address and the Report on the Economic Summit on "China's 11th Five-Year Plan and the Development of Hong Kong" have already discussed in great detail the directions for Hong Kong's future development and how to enhance the long-term competitiveness of our economy through various concrete measures. I have also proposed and implemented, in the four Budgets during my term of office, a number of measures conducive to Hong Kong's long-term development to ensure our prosperity and stability. Examples of such measures include abolition of estate duty and exemption of offshore funds from profits tax to consolidate our position as a major asset management centre; active promotion of CEPA, Pan-Pearl River Delta co-operation and development of Renminbi business to further our economic integration with the Mainland; support for the development of applied scientific research as well as our design and creative industries; heavy investment in education and implementation of various schemes to upgrade our human capital; and allocation of resources to promote the development of social enterprises and strengthen family support.

As Hong Kong is a highly externally-oriented economy, it is susceptible to economic changes in the external environment. Although the overall global economy is faring quite well as the International Monetary Fund has recently forecasted that world economic growth may reach 5%, there remain a number of uncertainties. For example, given the slowdown in the United States economy, the market is expecting a reduction in interest rates. However, with increasing core inflationary pressure, any United States interest rate hike by the Federal Reserve Board would have a great impact on the market, and increase the chance of economic recession in the United States, which, in turn, will affect global economic performance. In addition, we should be particularly watchful for global trade imbalances and financial market risks. Some Members have pointed out that Hong Kong will continue to face different challenges in future, such as a shortage of adequate convention and exhibition facilities to meet increasing demand. We will stay alert to the various challenges ahead and respond positively, so as to enhance the competitiveness of Hong Kong.

Creating employment opportunities is one of our major considerations in formulating government policies. In developing each new policy, I will

consider whether it would have a positive effect on Hong Kong's economy and create more employment opportunities in the labour market. As I mentioned in the Budget, given the booming economy in recent years and the implementation of many measures to revitalize the economy, total employment has increased by more than 310 000 over the low point in 2003, and about 40% of these jobs require relatively low skills. I am, however, aware that individual sectors and some low-skilled workers are still facing great difficulties brought about by economic restructuring. I have always emphasized that, rather than just providing able-bodied job seekers with welfare benefits, we hope to assist them by providing proper employment support and training, thereby helping them overcome work barriers and enhance their employability, and encouraging them to re-enter the labour market and achieve self-reliance. The pilot Transport Support Scheme proposed in the Budget will encourage unemployed and low-income people living in remote areas to seek jobs and work across districts. We have further relaxed the eligibility criteria of the scheme to benefit more people in need, reflecting the Government's serious attitude to promoting employment.

I appreciate the community's deep concern over the youth employment problem. Apart from the initiatives mentioned in the Budget speech, the Labour Department has been providing comprehensive employment services to job seekers through various programmes. With two more job centres coming into operation in Yuen Long and North Districts in September last year, the total number of job centres has increased to 12. To further strengthen employment support to young people and enhance their employability, two youth employment resource centres will be set up in 2007–2008 to provide one-stop integrated services on career counselling, value-added training and self-employment support to participants of the Youth Work Experience and Training Scheme and the Youth Pre-Employment Training Programme and other young people aged between 15 and 29. We will also provide transport support for the participants of these two programmes.

Some Members, chambers of commerce and professional bodies have suggested that we should reduce the profits tax rate and introduce group loss relief and loss carry-back arrangements to sharpen our competitiveness. I am of the view that our low and simple tax regime is very competitive both regionally and internationally and that our low tax rate is only one of the features of our favourable business environment. Besides, the current practice of allowing businesses to offset their losses indefinitely against the profits of future

years is already very attractive to investors. Nevertheless, we do need to review our tax system from time to time to ensure the competitiveness of our business environment.

### *Prudent Management of Public Finances*

The health of our public finances has a major bearing on the stability of our monetary and financial systems, investor confidence, and the sustainable development of our economy as a whole. In the past few years, whether in good times or bad, we have maintained strict fiscal discipline and ensured the efficient use of resources. We have worked hand in hand with the community to tide over the difficult times of successive years of fiscal deficit and restore the health of our public finances.

With our strong economic recovery, many items of government revenue have recorded significant growth. As the Government's financial position has improved markedly, there is room for us to implement more generous tax concessions to share the fruits of economic prosperity with the community. In this year's Budget, I have adopted a two-pronged approach. On the one hand, we have budgeted a total of over \$20 billion to introduce a number of tax relief and one-off measures to share wealth with the community. The measures include reverting the marginal bands and marginal rates for salaries tax to their 2002–2003 levels, increasing the child allowance to \$50,000 for each child, introducing an additional one-off child allowance of \$50,000 for each new-born baby, increasing the amount of deduction for self-education expenses to \$60,000, and waiving 50% of salaries tax assessed for the last financial year, subject to a cap of \$15,000, which will benefit all salaries taxpayers. Waiving rates for the first two quarters of this year, subject to a cap of \$5,000 per quarter for each rateable tenement, will benefit all rate-paying families and businesses, including public housing residents, middle-class families and small and medium enterprises. Reducing the rate of stamp duty on transactions of properties with a value between \$1 million and \$2 million will help ease the burden of many families in purchasing their own home.

On the other hand, we will continue to address the needs of the disadvantaged. In this connection, the Budget has proposed a series of measures, including the introduction of a pilot Transport Support Scheme to encourage people to work across districts, relaxation of two requirements in relation to disregarded earnings under the Comprehensive Social Security

Assistance (CSSA) Scheme and the setting up of a child development fund to help the grassroots improve their livelihood. I have also proposed to provide one additional month of basic assistance for CSSA and Social Security Allowance recipients to share the fruits of economic prosperity with them. The Secretary for Health, Welfare and Food has just responded in detail to the points raised on issues concerning social welfare and helping the disadvantaged. The estimated total expenditure on social welfare for 2007–2008 amounts to \$37.4 billion, instead of merely \$900 million, as some Members have suggested. Social welfare is the second biggest expenditure item after education. This reflects the fact that we are positively committed to helping the disadvantaged.

Some Members have queried during the debate whether the Government has deliberately underestimated the fiscal surplus. I have explained in my Budget speech that the variances between the revised and original estimates are essentially due to our economy's better-than-expected performance. Government revenue from various sources, including investment income and revenue from land premiums, stamp duty, profits tax and salaries tax, is also significantly higher than the original estimates. Besides, the government accounts involve huge sums of expenditure and revenue and thousands of individual items. A slight difference between the estimated and actual figures in some items would result in bigger variances in the consolidated figures. This is perfectly understandable. Moreover, in expenditure planning and the actual utilization of resources, all government departments observe the principle of prudent fiscal management. Therefore, the relevant departments should not be criticized when their actual expenditure is lower than the estimates, provided they maintain quality of service.

Some Members have also suggested that recurrent expenditure should increase to a greater extent in certain areas. Although there is now a substantial surplus in the government accounts, history tells us that government revenue fluctuates with changes in the economic cycle, and government expenditure lacks flexibility. Therefore, we must examine all expenditure proposals critically, subject to the principles of prudent fiscal management and keeping expenditure within the limits of revenues, and with due regard to the actual situation and the community's requirements.

Although the problem of our fiscal deficit has been overcome for the time being, I agree that there are still some long-term issues that need to be addressed, such as an ageing population, rising medical expenditure, a narrow tax base and

volatile revenues. If not tackled in a timely manner, they will bring enormous pressure to bear on our public finances in the medium to long term. We have just concluded a nine-month consultation on tax reform, and I am grateful to various sectors for their views. This consultation exercise has provided a good opportunity to engage the community at large in considering the issues that will affect the long-term development of Hong Kong. I believe we have made a very good start. Involving the public in policy deliberations demonstrates our commitment to "always people first". Moreover, to reduce investment income volatility, this Budget has proposed to revise the income-sharing arrangement between the fiscal reserves and the Exchange Fund. I am glad that this revision has been well received by the community. While observing the principle of maintaining the robustness of the Exchange Fund, we will explore ways to increase its return.

During the debate in late March, many Members expressed concern about the level of our fiscal reserves. Some Members thought that the Exchange Fund had usable assets of more than \$1,000 billion and suggested that some of these could be used to finance government expenditure. In fact, the so-called \$1,000 billion comprises not only the monetary base and the accumulated surplus of the Fund, but also the Government's fiscal reserves. Article 113 of the Basic Law clearly stipulates that the Exchange Fund shall be used primarily for regulating the exchange value of the Hong Kong dollar. The Exchange Fund Ordinance also provides that the Fund shall be used principally for purposes affecting, either directly or indirectly, the exchange value of the currency of Hong Kong, and then to maintain the stability and integrity of our monetary and financial systems, with a view to maintaining Hong Kong as an international financial centre. To achieve these statutory objectives, the Exchange Fund needs to have adequate resources. As such, the monetary base and the accumulated surplus of the Fund, which stand at about \$800 billion, should not be used to finance government expenditure. Our handling of the fiscal reserves, which amount to about \$360 billion, can, however, be more flexible. The Budget has indeed proposed revising the income-sharing arrangement between the fiscal reserves and the Exchange Fund to increase the Government's investment income and enhance its stability.

Maintaining adequate fiscal reserves can also help ease the impact arising from economic downturns or setbacks caused by external factors, and can improve the ability of the Exchange Fund to maintain, as and when necessary, the stability and integrity of our monetary and financial systems, which is crucial

to the economic stability and prosperity of Hong Kong. Therefore, the Government cannot redeploy the fiscal reserves irresponsibly to finance expenditure items, in particular on a recurrent basis. We should not forget that, due to the economic downturn but given the need, nevertheless, to maintain government services, our fiscal reserves had shrunk by \$190 billion, that is, 40% over seven years from \$457.5 billion at the end of March 1998. During a recession, it is possible that the reserves could be used up in a few years. Nevertheless, I agree that the reserves need not keep expanding, but rather they should be maintained at an appropriate level in order to meet our needs. As such, we need to consider the issue further.

Madam President, the Government is committed to promoting long-term economic development and helping the disadvantaged. I believe that this Budget has struck the right balance between reviving the economy, promoting employment and improving people's livelihood, and can achieve its goal of benefiting people from all walks of life. After the announcement of the Budget, many citizens and people from various sectors of the community have expressed their support through a variety of channels. I would like to take this opportunity to extend my heartfelt thanks to them. Their support represents the public's approbation of government policies, and is a great encouragement to us. We will, in pursuance of the "proactive, pragmatic, always people first" concept of governance, continue our efforts to build a more prosperous, harmonious and vibrant Hong Kong.

Madam President, the weather is ever-changing and always hard to predict. We often witness here sudden shower and sunshine, or rain drifting over the eastern hill and the sun gleaming over the western range. Today is a fine day with bright clear sky and the weather is touchingly beautiful. I hope Members would be inspired by the weather and vote for the Budget, a Budget that has gained the general support of the public. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is.....

(Mr SIN Chung-kai rose to ask a question)

**PRESIDENT** (in Cantonese): Do you have a point of order?

**MR SIN CHUNG-KAI** (in Cantonese): Yes, it's a point of order. The Democratic Party used to observe a tradition of requesting that the meeting be suspended for five minutes after listening to the Government's response so that we can discuss how to vote. May I have your permission, President?

**PRESIDENT** (in Cantonese): Yes. I now suspend the meeting for five minutes. Members please return to this Chamber spontaneously after five minutes.

12.30 pm

Meeting suspended.

12.35 pm

Council then resumed.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Appropriation Bill 2007 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for three minutes, after which the division will begin.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr James TIEN, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr KWOK Ka-ki, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr Albert CHENG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the motion.

Mr LEUNG Yiu-chung and Mr Albert CHAN voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 51 Members present, 48 were in favour of the motion and two against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CLERK** (in Cantonese): Appropriation Bill 2007.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

**APPROPRIATION BILL 2007**

**CHAIRMAN** (in Cantonese): We consider the Schedule first, in accordance with Rule 68 of the Rules of Procedure.

I now propose the question to you and that is: That the sums for the following heads stand part of the Schedule.

**CLERK** (in Cantonese): Heads 21 to 28, 30, 31, 33, 35, 37, 39, 42, 44 to 49, 51, 53, 55, 59, 60, 62, 63, 70, 72, 74, 76, 78, 79, 80, 82, 90, 91, 92, 94, 95, 96, 100, 106, 112, 114, 116, 118, 120, 121, 136, 138, 139, 140, 142 to 145, 147, 148, 151, 152, 155, 156, 158, 159, 160, 162, 163, 166, 168, 169, 170, 173, 174, 180, 181, 184, 186, 188, 190 and 194.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Head 122.

**MR JAMES TO** (in Cantonese): Chairman, I move that head 122 be reduced by \$45,170,000 in respect of subhead 000. This sum of money is equivalent to the

total expenditure estimate for the Complaints Against Police Office (CAPO) of the Hong Kong Police Force.

This is actually the eighth year for me, on behalf of the Democratic Party, to propose deleting the expenditure for the CAPO. Why? It is because the problems are so numerous that we have come to realize that money will simply be wasted if provision continues to be made in the existing manner. I once described the CAPO as the No Complaints Against Police Office because the complaints lodged with it would often disappear for no reason because of its frequent employment of "little tricks".

Of course, some people disagree with me. Upon the initial receipt of a complaint, the CAPO will conduct recording and statement-taking in the presence of an impartial observer. Actually, during a prior telephone conversation with the complainant, intensive "lobbying" would have already been carried out by the CAPO, probably for the sake of turning big problems into small ones or explaining police procedures, and so on. Anyway, the ultimate purpose is to make the complaint disappear or help the complainant vent his anger so that he will ultimately drop his complaint.

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

Why would something like this happen? It was mainly because the relationship between police officers was indeed very intimate — they went through fire and water together and spoke the same language. While this is desirable, the problem probably lies with their capacity as police officers. Very often, due to excessive mutual understanding and sympathy, questions like these might arise: Must certain actions be taken in certain circumstances? Are the procedures or consequences correct? Can information be obtained if the matter was not handled in that way? Regarding these circumstances, as the CAPO is staffed by police officers, they will tend to be understanding and sympathetic.

Certainly, someone might argue otherwise as police officers should be differentiated. If any of them break the law, they should be investigated and arrested. For instance, police officers having committed robbery will be arrested, just like others having committed the same crime. But is this really the case? Is it the case that, in the course of lodging their complaints or under

the present circumstances, members of the public show a lack of confidence in the practice of having police officers carry out investigation of their peers?

Members of the public face totally different attitudes and treatments when lodging complaints with the CAPO and an independent organ, such as the Independent Commission Against Corruption (ICAC). I have been to both places before. I can tell Members..... Of course, I should not be taken a yardstick as I am a Member of the Legislative Council and have long been responsible for security affairs. Many members of the public have been to the CAPO and the ICAC. Generally speaking, they have a strong impression that they will be treated seriously and their complaints taken very seriously too when they report corruption (including complaints against police officers) to the ICAC.

When they go to the CAPO, however, the police officers there will say a lot of things. As I described earlier, they might ask a complainant if he is really serious about lodging a complaint, and it is possible that there may be some misunderstanding about a police officer. In order to establish the nature of a complaint, the CAPO might, upon receipt of the complaint, make some comments by asking the complainant whether or not he might have made a mistake. While police officers might probably need to act in that manner, they have nevertheless made some unnecessary verbal lobbying.

When members of the public report corruption to the ICAC, will they be asked questions like: Is there any misunderstanding? Is it possible that the alleged person has obtained the Chief Executive's approval or he is forced to offer the money in question because he is an undercover agent? Is it possible that he has been forced to traffic in drugs for the sake of arresting a drug lord? Is it possible that there is a mistake? The ICAC will never pose any questions in this manner.

The lack of public confidence has reached such a state that I have to implore members of the public to lodge complaints. Members must bear in mind that I did not fabricate the complaints or ask the public to do the same. I was told by the public that they did not trust the CAPO. When I asked them what should be done, they requested me to take follow-up actions and let the Legislative Council carry out investigation. When I replied that the Legislative Council had no investigation power, they insisted that the case be forwarded to the Independent Police Complaints Council (IPCC) for investigation — they still

had some trust in the IPCC. However, I would tell them that neither the IPCC have the investigation power. It could merely request the CAPO to carry out investigation. Furthermore, nothing could be done if the conclusion drawn by the IPCC after investigation differed from that of the CAPO, and any difference could not be reconciled. Only time would be wasted in the end. Even if an alleged person was found at fault, the final power to decide on the method of punishment is still vested in the Commissioner of Police, not the CAPO.

In the end, I told them that there would be one less genuine complaint in the world should they refrain from complaining to the CAPO in the event that there was abuse of power or dereliction of duty by the police. When the Commissioner or the Secretary appears before this Council next year, they will gladly announce that the number of complaints has dropped, and the situation improved this year. People are reluctant to complain because they do not have faith. Sometimes, I have to help them, or even beg them. I would tell them that I do not trust the CAPO either, but never mind, they should go ahead with their complaints because that is better than seeing the complaints figure drop. Otherwise, the Commissioner or the Secretary will then blow their own trumpet, saying that the situation has improved a lot.

In one extreme case, a law-enforcement officer from another district acted as an undercover agent in an attempt to crack down on a triad syndicate. However, his acting was so well that he was beaten up by officers of the Organized Crime and Triad Bureau during an operation. There was a similar scene in the motion picture "Internal Affairs" too. The undercover agent was very frustrated and felt totally indignant about the beating. Despite his identity as an undercover agent, coupled with his excellent acting as a triad member, was it justified for him to be beaten up by policemen just because of his identity as a triad member? Of course, he might have beaten others when he posed as a triad member, he certainly felt bad when he himself was beaten up instead. Perhaps he was beaten up too badly. However, he was reminded by his controlling officer that he could not disclose his identity. What could he do then? An undercover agent ended up being beaten by policemen.

There was another case involving another law-enforcement officer. An off-duty Customs officer tried to intervene when he saw an ordinary citizen unreasonably beaten up by policemen, saying that he would definitely act as a witness in lodging a complaint. Then, a whole squad of Police Tactical Unit

(PTU) was summoned in an Emergency Unit vehicle and beat him up badly. The staff union of the Customs service and the officer immediately approached me and asked whether an independent investigation could be carried out. When I told them to seek assistance from the CAPO, they told me that they had no trust in the CAPO. As members of the disciplined forces, they should have an even better idea of how the CAPO operates.

In a most extreme case, a dentist, who is a friend of a police superintendent, was beaten by members of the PTU during a licence check, probably because he was quite adamant in his manners. After the incident, he approached his friend, the police superintendent — they used to live in the same dormitory in the University of Hong Kong. In the capacity of his friend, the superintendent told him that justice could not be done by complaining to the CAPO. The superintendent then suggested that he could let him handle the matter and he could even ask the policemen to offer him apologies to settle the matter. Anyhow, the dentist had already been beaten.

Actually, this is crystal clear. Even the policemen themselves know it very well. But why do they find it so offensive and object to making the CAPO independent? Of course, as everyone knows, the ICAC will carry out investigations impartially. Will the CAPO show some understanding and sympathy should it carry out the same investigations? It is rumoured that this is actually not the case. The person being investigated will feel equally stressed no matter whether he is being investigated by the CAPO or the internal investigation unit because the matter will be handled according to the law. While it is often the case that some minor cases might be handled in this way, major cases are often treated differently. Why? Because the CAPO cannot hand in a blank performance record or achieve nothing in a full year. Therefore, it has to pretend making some cosmetic efforts.

Furthermore, many problems, including investigation problems, have arisen because the CAPO is not independent of the police. If the CAPO is independent of the police, it will then be able to take immediate actions such as opening files, gathering evidence at the scene and exercising the power to make laboratory tests, evidence-gathering, cross-examinations, and so on, compulsory when people complain to this new independent organ. However, as the CAPO is a unit in the Police Force, complainants must be told that while they can lodge complaints, a statement must be taken in the first place. However, if a complainant is already involved in a case, his statement must be handed to the

team responsible for prosecution and investigation because he might have been charged in certain other cases. As a result, the CAPO will learn of his defence in advance and, in terms of legal procedure, this is to the disadvantage of the complainant. In view of this, the CAPO will advise the complainant to consult his lawyer whether he should give the statement. From the legal point of view, the lawyer will find it unreasonable for the complainant to disclose his defence at such an early stage. Hence, technically, the lawyer will advise the complainant to hold his complaint for a while and not to take the statement. It is sometimes for these reasons that the taking of evidence and witnesses can be tampered with, and many things can thus be lost because of the disappearance of evidence. Why will this happen? This is because the CAPO is part of the police. If it is not — let me cite an example. If the police charge a certain person for trafficking in heroin, and that person considers that some policemen have been bribed or involved in corruption, he will lodge a complaint to the ICAC and the ICAC will proceed with investigation immediately by taking his statement and encouraging him to give any evidence substantiating that some policemen are involved in corruption. The ICAC simply has no need to wait. Furthermore, the ICAC will not submit his statement to the team in the police. As long as the CAPO remains part of the police, problems like these will continue to arise.

Lastly, the IPCC. The Government opines that the situation is better because of the presence of the IPCC. However, even the IPCC has once put forth a proposal on the issue of independence, saying that the image of the CAPO is indeed problematic because no one would trust it. Such being the case, can a civilian, not a police officer, be appointed as the head of the CAPO? The answer is no.

Furthermore, I have once asked whether the IPCC can be given the power to make decisions or judgement or impose punishment? The answer is no. The decision-making power must be vested in the CAPO or, in other words, the Commissioner of Police. If someone is dissatisfied with the CAPO, no, I should say if the IPCC is not satisfied, it may request the CAPO to conduct an investigation anew. However, the *status quo* will still be maintained after investigation. Hence, can the IPCC be given the power to carry out a second investigation? Is it possible for the IPCC to conduct its own investigation if it is not satisfied with the outcome of the one conducted by the CAPO? The answer is again no. Anyhow, no investigation can be conducted by the IPCC. Only policemen can investigate their peers. It must be borne in mind that the mechanism whereby the IPCC can act as the second holder of power to carry out

investigation will be activated only when the IPCC (as an appointed organ) is not satisfied with the relevant report. Therefore, the mechanism should be very safe. However, this is not allowed. Why? Because police officers are supposed to carry out investigation on their own peers and, upon the completion of the investigation, determine whether the complaint is established, partly established or not established, and make the final decision on what punishment should be imposed. In other words, the CAPO takes care of everything. If the IPCC is unconvinced, it may speak out or even submit a report to the Chief Executive. However, it still does not have any investigation power. What can be done? The *status quo* will still be maintained even after repeated investigations. Only that the IPCC and the CAPO keep wasting each other's time.

The Government once stated that only police officers knew how to investigate if there was abuse of power among police officers. Those who were not police officers would have no knowledge. Three decades ago, prior to the establishment of the ICAC, police officers also echoed the Government's words by saying that only police officers knew how to investigate if any police officers had engaged in corruption. How could people who were not police officers know how police officers would have been involved in corruption? Right? However, over the last three decades, the ICAC has already proved that not only police officers know how to investigate police officers. Those arguments no longer hold water.

Although I am not in a position to divulge the details of a certain case recently heard by the Coroner's Court, the problem is, of the wide array of cases, two categories of cases are investigated by police officers. One of them involves cases in which someone died under police custody. The other one involves police officers killing police officers. I am referring to the highly sensational case in which a police officer considered to be bad and another one good by other police officers were involved. The case was investigated by police officers too. Although the Coroners Ordinance provides that a Coroner has the power to instruct the Commissioner of Police to take extra measures to ensure fairness, how can he do so, given that he is like a commander with no soldier under his command? If the CAPO is independent of the police, the Coroner can at least, on encountering these two categories of cases or cases which must be handled by an organ with a more independent image, commission this organ to conduct independent investigation. If it is considered undesirable for forensic investigation to be conducted by the ballistic experts of the police,

FBI and Scotland Yard can be commissioned to perform the task instead. This is very important. Why should the CAPO remain a unit in the Police Force? This has given rise to a number of problems, not only one.

In the final analysis, why should police officers be afraid of getting an organ independent of the police to carry out investigations? This is the cause of fear to the people, an area in which they have the least trust. The more police officers dislike the idea of having an independent organ to carry out investigation, the more the public feel that the organ is lack of credibility, suspicious and not trustworthy at all. The organ must become independent before the public and police officers can get the fairest result.

Hence, Deputy Chairman, I think that money has been wasted under the existing system. I have therefore decided to propose this amendment to slash this sum of expenditure.

**Mr James TO moved the following motion:**

"RESOLVED that head 122 be reduced by \$45,170,000 in respect of subhead 000."

**DR FERNANDO CHEUNG** (in Cantonese): Every year, Mr James TO will propose an amendment like this one. In the past, I did not pay too much attention to it. Besides, I had a feeling that, should the provision for the CAPO be slashed as a result of the passage of the amendment, the people would be denied a channel of redress. Alternatively, would the situation worsen if a mechanism operating for the purpose of receiving the people's complaints was closed down because of cessation of funding? I have all along considered this probably a display of a certain gesture to demonstrate Mr James TO's concern about monitoring of the police work and channels of redress and strive for opportunities of discussion in the hope that the public can pay attention to the process of amendment, that the existing channels of redress cannot adequately monitor policemen for the prevention of abuse of powers.

However, after listening to Mr TO's speech, and considering the fact that, Deputy Chairman, we coincidentally received in the Complaints Division this morning a complaint lodged by a group of sex workers and the organization serving them, Zi Teng, with some concrete examples illustrating the serious

problems with the CAPO, my consideration has somehow changed. I used to consider this an expression of a certain gesture. Now, I have a feeling that it might be even better to practically do without the CAPO, as the existence of a bad system might be even worse than the absence of the same. I have therefore begun to feel that the amendment proposed by Mr TO is not an expression of a gesture and might worth our support.

Why am I saying this? The complainants recounted their experience in lodging complaints — the examples cited by them were definitely those which could be told during a very short period of time. The first example cited by them was that they called on the CAPO, saying that they had some grievances. For instance, they were taken advantage of during investigations by some police officers who obtained sex services before arresting them, or they felt that they had been framed. They said that the first response of the CAPO was to ask them whether they had any witnesses. If the reply was in the negative, the CAPO would give them a routine response, not an individual one, by telling them that they might face the risk of being charged by the police with an additional offence of making a false allegation.

What complaint mechanism is this when the first response made by this mechanism specially tasked with receiving complaints against police on receiving a complaint is to warn the complainant that he or she might be charged with an additional offence? Fine. During the formal process, the complainants would provide some information on what had happened, such as they were handcuffed by police officers in making the arrests when there was utterly no need to do so and absolutely no threat of force, and the use of violence was excessive. After listening to the evidence, the staff of the CAPO would record that the complainants had been treated impolitely. Deputy Chairman, I believe you have heard it very clearly that, despite the use of handcuffs and excessive violence, as mentioned by me earlier, what was put down on paper was merely "impolite". The two are poles apart.

Next, when the complainants expressed their wish after the complaint process to present their complaint in writing because of the huge difference between the content of the document and that of their complaint, their request was turned down by the officers of the CAPO on the ground that the information unilaterally provided by them would not be accepted, because the record of complaints was considered informal. This was most strange. I was told that the complainants had to lobby for quite a while before the CAPO finally accepted their written complaint for reference.

We spent several minutes this morning discussing the way complainants were treated by the CAPO. I found those simple episodes very problematic already. We have merely cited an actual experience as an example. However, in terms of the framework and management, can such a mechanism handle and monitor whether or not there is abuse of powers by the police? Can this channel of redress rectify the abuse of powers?

It depends on, first, whether the CAPO is independent or not. To monitor all government departments and mechanisms with powers, there must exist a mechanism independent of them before monitoring can be enabled. Insofar as the operation of the entire Government is concerned, the Police Force is unique in the sense that it is outside the Complaints Division's ambit. Complaints against policemen can only be directed to the CAPO. The existing mechanism is actually divided into components. The establishment of an independent complaint mechanism is honestly the best arrangement. However, the Government is reluctant to set up an independent mechanism, and the complaint mechanism is therefore divided into two: one is the CAPO, an internal organ of the police, and the other is the IPCC. However, the IPCC does not accept complaints directly lodged by the public. Neither does it have investigation power. The power of investigation is entirely vested in the CAPO, for only the CAPO can carry out investigations. Such a mechanism is evidently a system of "peer investigations". If necessary, the result of an investigation, upon its completion, will be referred to the IPCC for further review. Even if the IPCC is not satisfied with the result of the review, nothing can be done, as stated clearly by Mr TO just now.

But then, can a fresh investigation be conducted? Can the case be returned to the CAPO for another investigation? By merely listening to my description, I guess any normal person should be able to sense that the mechanism must be very problematic. Not only are investigations conducted on one's own peers, the independent component has merely half of the authority. The complaint or monitoring mechanism, now split into two, is essentially a rubber-stamp or a toothless tiger. Even if it is not satisfied with an investigation, there is no way that it can conduct an independent one, resulting in the entire complaint mechanism and its monitoring power being seriously undermined. In my opinion, its most important function is to serve as an ornamental vase to explain to the public or the international community that the Hong Kong Police Force have in place a quasi-independent complaint

mechanism to carry out monitoring. But actually, the mechanism has completely failed to achieve its desired effect.

Therefore, under the existing arrangement, if the expenditure for the CAPO is completely slashed so that the CAPO can simply not survive, the Government will be forced to address this problem. Why can the IPCC not accept complaints from the public? Why can the IPCC not be given independent investigation power? If these are proved possible, such subjects as police monitoring to avoid abuse of powers will then be brought back before the public.

Hence, I consider that Mr TO's amendment carries substantive significance instead of purely demonstrating his position. With these remarks, I support Mr James TO's amendment. Thank you, Deputy Chairman.

**MS EMILY LAU** (in Cantonese): Deputy Chairman, I am speaking in support of Mr James TO's motion.

In fact, Hong Kong has been plagued by this problem for many years. I do not understand why the Chief Executive has not "played a great game" of it and tackled the issue by identifying an ultimate proposal. Of course, the Secretary would not want to have a "hybrid" proposal, right? The Secretary surely knows that Hong Kong is not the only place where the issue is discussed. In fact, the United Nations has also discussed it on a number of occasions. Therefore, Deputy Chairman, I really find it boring because we have to discuss this motion in this Chamber every year. As such, a Director of Bureau once asked me not to support Mr James TO's motion anymore. I replied, "What is wrong with supporting him? It was just like paying tribute to our ancestors twice a year in Ching Ming Festival and Chung Yeung Festival. We would definitely do it." However, even though we are prepared to do it like paying tribute twice a year to our ancestors, there is no one listening to us and the motion will definitely be negated. Hence, after we have finished our discussion, and he has given us his response, then everyone will then call it a day and leave happily for a good meal.

Deputy Chairman, I think it should not happen this way. I really hope that the Secretary can pay attention to this issue — now I have heard that he will be appointed again, that is, he would be serving in his present office for a few

more years. In that event, I am not sure if I should offer him my congratulations or I should give other responses. I really do not know whether I should congratulate him or not. Deputy Chairman, I really have a hard time here when I am saying this — but when the Secretary first assumed office, I tendered him a piece of advice: If you do not make too many new moves, you will enjoy very high popularity ratings. Just as predicted, the Secretary does enjoy rather high popularity ratings as he has not made too many new moves. It was because if he bothers to review what his predecessor did in the past, he should know what he should do. However, in handling the surveillance bill, he has really disappointed us a lot.

In connection with this issue, I believe the Secretary must think about it carefully, to see if he can do anything about the opinions expressed in this Council as well as those expressed by the United Nations. In fact, we can see that Hong Kong is not the first place to do this. There are mechanisms in other places to conduct independent investigations into complaints against police officers. I believe this is a very solemn issue. The Secretary must realize that this issue cannot be dismissed easily.

Worst of all, the victims are very often none other than the most disadvantaged in society. In a civilized society, it is most important for us to take care of the disadvantaged groups in society. Personally, I understand and have discussed with certain organizations which said that the police had shown some improvement. In the tragedy that happened in Tin Shui Wai, you may as well be aware, Deputy Chairman, that it was a case of domestic violence. When the case was examined in the Coroner's Court, some people said that the police were not telling the truth, and it had triggered some major controversies. However, later on, some organizations felt that the police had improved, that they had already done something. Therefore, if they have done something, we must say so. If there is room for more to be done, we must also say so. Thus, I hope the Secretary can solemnly examine the situation.

This morning, Dr Fernando CHEUNG and I went to the Complaints Division to listen to the complaints lodged by Zi Teng and some sex workers. Frankly speaking, I believe they have never dreamed that, several hours after they have made complaints in the Legislative Council, we can present their grievances in this Council meeting on their behalf. I hope Zi Teng and those sex workers are listening to our meeting now and I also hope that they can realize that the Secretary is listening to their cases in person in this Chamber. This is

exactly what they wanted, because they feel that they are socially disadvantaged, and that no one would listen to their voices. This is especially so for sex workers. Very often, some members of the public do not understand them and do not accept them. They feel that some people would criticize them or despise them and think that they should be responsible for their deplorable situations because they absolutely should not undertake that kind of work. However, we do not subscribe to such a view. Therefore, today we have decided to hold a case meeting, and if necessary, we would also bring this issue back to the Panel on Security for discussion. We hope the Secretary can address this issue in a serious manner. I also hope that the new Commissioner of Police can deal with this case solemnly.

I am not going to repeat what Dr Fernando CHEUNG has said earlier on. But some other people have also mentioned that the sex workers were handcuffed when they were arrested. Please imagine this. All they were doing was nothing more than arresting some sex workers or some people who might be involved. Why was it necessary to use the handcuffs? Do the policemen think that they were arresting some most wanted felons? When a complaint is lodged, the police would say that they do have the authority to do that. The situation was like, when someone comes forward to make a complaint, the police would offer some justifications for the police officers. If so, does it mean that the Police Force need not handle such complaints? What the police mean is: Since the police officers have the authority to do that, why should they lodge any complaints? Besides, when someone complained of having been beaten up to have sustained bruises all over the body and requested an injury assessment, the police would say that the complainant would have to wait for one or two weeks before such an assessment can be arranged. Of course, the complainant would say the assessment would not be necessary if it took such a long time; by then, the injury would not be visible anymore. This was what had happened. The Secretary must examine the situation in person. What we are facing is such a system. If you go there and lodge a complaint, and get such a result, will you still have any confidence in this system? If we do not have any confidence in this system, why should we spend \$45 million on it? This is most logical.

Besides, among the complaints lodged, one of them involved another sex worker. She committed suicide several years ago. At that time, her case was heard in the Coroner's Court and it was concluded that she had committed suicide. But why did she commit suicide? It was because she felt that the police had done her injustice which made her very unhappy. So what should be

done about it? Consequently, members of her family went to lodge a complaint. The investigation took more than a year. Whenever they made telephone calls to the CAPO to inquire of the progress of the investigation, they would get replies somewhat like this, "Don't you think that we have got nothing to do? We are not just working on your case; we also have to handle many other cases." Eventually, after more than one year, they said the job was done and the investigation was completed, and a report had already been submitted to the Independent Police Complaints Council (IPCC). But those aggrieved do need to know what had taken place in the process. Hence, we can see that there are problems with many issues. As Dr Fernando CHEUNG has said, we had met them for only about 20 minutes, yet we had already been able to identify so many problems. So, is it necessary for the authorities to handle these issues?

For this reason, Deputy Chairman, I strongly hope that the Secretary can really look into these incidents. The world would not collapse even if we allow some independent, experienced and competent persons to conduct investigations on the police officers. I understand that there may be some resistance within the Police Force. Deputy Chairman, on 20 March, we, Members of the Legislative Council, were invited to visit the Police Academy in Wong Chuk Hang. Several Members joined the visit. On that day, they briefed us on a lot of things to show us what the policemen were learning now. We found that they were learning the significance of honesty. This is the most significant point. It is most important for a person to be honest. We absolutely agree with this. At that time, some Honourable colleagues wondered how much the IPCC had seen their training materials. But some problems seem to be existing among them. When the people come forward to lodge complaints, they would usually say that the policemen speak foul language and tell lies. I believe when they have a chance to review those IPCC documents, they would also know that there are problems with some of the policemen. However, is IPCC itself an organization that has credibility and is responsive to the people's aspirations? It takes so long for it to be conferred with a legal basis. Even if we would like to make it independent, and even if a bill is tabled to the Legislative Council, still it would not be possible for it to solve all the problems.

What we and the people demand is an independent organization that has credibility, an organization acceptable to both the public and the Police Force. I feel that when such issues are involved, we need to see to it that justice is done to all parties concerned. But I do not think that the Police Force have given us a convincing justification to explain to us why we cannot have such an

organization. I believe that the authorities are absolutely capable of identifying some people possessing such attributes, abilities and experience to investigate police officers and at the same time who are independent of the Police Force. Such an arrangement will not only be fair to the public, but will also be fair to police officers. I also agree that, sometimes some of the complaints may not be substantiated. But if such complaints are investigated by police officers themselves and then they conclude that the complaints are not substantiated, then people will criticize it as unfair, "Of course they will arrive at such a conclusion, how can a complaint be substantiated?" However, the situation will be different if the conclusion that a complaint is not substantiated is announced by a non-police body, as in the case of the Office of The Ombudsman, which very often investigates civil servants. When it says that a certain complaint is not substantiated, few people would complain. The people may feel unhappy about it, but since The Ombudsman has said so, they would usually accept it.

This issue that has plagued Hong Kong for so many years may not necessarily be resolved today. Both this amendment and this motion will be negated, but the problem cannot be dismissed easily. Secretary, I do not know whether you will work for another term, but no matter who assumes your office, he will have to handle this issue. I so submit.

**MR CHIM PUI-CHUNG** (in Cantonese): Deputy Chairman, I have risen to speak because I wish to support Mr James TO's motion in spirit. But in fact, it still would not be passed eventually. I have been a Member of this Council for many years, so I have also received complaints from various sources, including many detainees in Lai Chi Kok. But eventually, I still have to say that I feel sorry for them, and I also feel sorry for myself because I really could not redress their grievances.

This is attributable to the Government's policies and the excessive restrictions imposed by the police. My opinions in this regard are not really targeted at the overall operation of the Government. Instead, I just feel that the Secretary and the relevant persons should reflect upon themselves intensely.

Hong Kong is an advanced and civilized society, but still many aggrieved cannot find channels of redress. Hence the circumstances and the mentality so generated warrant a review. Just now Mr James TO proposed not to allocate funds to it, thus making it unable to operate. But do such circumstances exist

only in the Police Force? In fact, we may also make use of the financial means to impose restrictions on, say, the Urban Renewal Authority (URA), which is formerly the Land Development Corporation. Many Members of the Legislative Council are also members of the URA, which after all does have some substantial conflict of interests with the people.

As of today, I have also received two to three complaints. With regard to a redevelopment project in Tsim Sha Tsui, although they have done some planning there during the past few years, eventually it is not implemented. This is also most unfair and unreasonable. On the other hand, many of the practices and acts of the Securities and Futures Commission (SFC) should also be criticized. Therefore, it is indeed very impractical for us to use the Appropriation Bill to interfere with their work.

We all along have a lot of criticisms of this unit of the Police Force. They also understand our criticism of them. As an old Chinese saying goes, "Officials always protect the officials", this is something that cannot be changed even though it has been 10 years since the reunification. Therefore, all we can do is to express our opinions by all means, but we may as well expect that ultimately we might still be unable to achieve anything. However, as Mr TSANG is now the third Chief Executive designate, I believe under his strong governance, and the co-operation of the Directors of Bureaux, he should be able to gauge the genuine aspirations of the people.

Although our economy has been improving recently and everyone is more relieved now, the competition we face is very strong. In the meantime, the Government should be concerned about the injustice suffered by the people and their feeling towards the Government as a whole. We understand that though the economy has basically improved, there are still many people whose living standard and environment have not been substantially changed or reformed.

Under such circumstances, the Government should at least make the people feel that it does care about them and has paid attention to them, instead of suppressing them all the time. Particularly, the police are closely related to the people. We understand that the police are also very keen to make use of the overall environment in society to establish some special relationship with the people, so that the latter could approve of their work. However, their work in reality is inadequate in many aspects.

For example, with the progress in society, the nightclub business has virtually become zero because its business has been completely swallowed up by our neighbouring cities such as Macao and Shenzhen. As far as I understand it, Hong Kong cannot retain even a tiny portion of the business. But still the Government has laid down a lot of traps, making operators of the business unable to survive. Of course, the Government may have its own policy, that is, it may hope that people coming to Hong Kong to attend conferences would go to the church after concluding their meetings in Hong Kong. But how can we find so many churches for them to attend? Therefore, I hope the Government can adopt policies that can take care of the needs of society as a whole.

Although I have spoken mainly to convey the feeling that we cannot expect to use the policy of appropriation to regulate the overall operation of government departments, I agree in spirit that there is a need for the Government to introduce reforms.

**DEPUTY CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): If not, Secretary for Security, do you wish to speak?

**SECRETARY FOR SECURITY** (in Cantonese): Deputy Chairman, the authorities oppose the amendment proposed by Mr James TO to abolish the appropriation for the Complaints Against Police Office (CAPO).

I would like to point out here that while I agree entirely with Ms Emily LAU that the Government is obliged to protect the disadvantaged, I take exception to the earlier remarks by some Honourable Members that the disadvantaged are being bullied by police officers.

During the past few years, whenever the Legislative Council examined the Appropriation Bill, Mr James TO would move a similar amendment. This amendment would not result in any improvement to the existing system of complaints against the police and, on the contrary, would only deny people channels of redress.

As pointed out by me in the past, the existing system of complaints against the police has already put in place an effective monitoring and checks and balance mechanism to ensure that complaints lodged are fairly and thoroughly investigated. At present, the CAPO under the Police Force is tasked with investigating complaints against police officers. The CAPO is different from other front-line and operation units in that it is under a different division in the Police Force and supervised by a different commander. This is to ensure that the investigations it conducts will be thorough and impartial. More importantly, the investigations conducted by the CAPO are monitored and reviewed by the Independent Police Complaints Council (IPCC).

After the investigations are completed, the CAPO will submit a detailed report on each one of the investigations it has undertaken to the IPCC for examination. The IPCC may require the CAPO to submit details and papers concerning the complaint cases. It can also meet with the witnesses, and members and observers of the IPCC can observe in person, by making arrangements in advance or by making a blitz check, the investigations being conducted by the CAPO. At present, there are altogether 89 observers, including those who are serving members of the IPCC. This has greatly enhanced the monitoring capacity of the IPCC and the number of observation visits made has risen from 26 in 1996 to 317 in 2006.

The IPCC would often raise queries and make suggestions when re-examining the cases. It can also require the CAPO to submit a further explanation or to launch a new investigation into a complaint or even refer the case together with the IPCC's recommendations to the Chief Executive. The CAPO would carefully consider those suggestions or offer satisfactory explanations to the queries, and follow up the suggestions and queries made. During the three years between 2004 and 2006, the CAPO acted on the advice of the IPCC and amended the findings of 197 cases investigated. From this, it can be seen that the IPCC has been able to exert great influence and undertake effective monitoring within the complaints system.

(THE CHAIRMAN resumed the Chair)

In the past few years, the authorities have launched a number of improvement initiatives in order to improve the complaints against police system, including the opening up of certain regular meetings of the IPCC to

members of the public who may come to attend these meetings. A Serious Complaints Committee has been set up under the IPCC. Each month the CAPO is required to submit progress reports on specified serious complaint cases to the Committee.

In order to further improve the existing system, we are actively drafting legislation to convert the IPCC into a statutory body. The legislation will clearly define the duties, functions and powers of the IPCC and will in turn reinforce the independence and transparency of the IPCC and hence boost public confidence in the complaints against police system. We consulted the Panel on Security of the Legislative Council on major legislative proposals in July 2006. We are now consulting the IPCC on the latest draft of the Bill in the hope that the Bill can be tabled to the Legislative Council during this Legislative Session. Actually, a time slot has been reserved for this purpose in this Legislative Session.

I would like to reiterate that the existing complaints against police system is an impartial and effective mechanism. It fully utilizes the expertise of police officers and their profound knowledge of police work in the investigation of complaint cases. As an independent and effective monitoring and checks and balance mechanism, the IPCC ensures that complainants will be given a fair and thorough investigation into their complaints. In our opinion, it is an effective arrangement currently to have the CAPO take charge of investigations and the IPCC responsible for monitoring and re-examination of the cases. On the contrary, if the amendment proposed by Mr TO is passed, the CAPO will be forced to terminate its operation and it will no longer receive and handle complaints from citizens against police. This is certainly not in public interest. So I implore Honourable Members to support us and oppose Mr James TO's amendment.

Thank you, Madam Chairman.

**MR JAMES TO** (in Cantonese): Chairman, the presence of Financial Secretary Henry TANG in the Chamber just now reminded me especially of something that happened in the past.

It was 1992, that is, the days of the former Legislative Council. The then Legislative Council was about to vote on a certain motion (Chairman, you were

of course also present on that occasion). I was then sitting next to the Financial Secretary (who was at that time a Member). Some other appointed Members were also present. In the end, these appointed Members voted for my motion, which was very much a pleasant surprise to me. Why? Because when they met with the then Secretary for Security, they were given only one reply. They were simply told, "No, no change must be made because we must depend on the police." The police were very overbearing at that time, and Members were all under very heavy pressure. In the end, these several appointed Members changed their position and voted for my motion just because of that reply (bearing in mind that it was 1992).

Do Members understand why I made it a point to say that those Members were appointed Members? I simply wanted to highlight the fact that appointed Members at that time were under immense pressure. It was 1992, the days of the British Hong Kong administration. These Members (Chairman, I am not referring to you) at least mentioned once to me that they were under very heavy pressure. They said that their support for my motion would be tantamount to a mutiny. But after hearing the Secretary for Security's remark, they were convinced that there was really a problem. How could the police be so overbearing, exerting so much pressure on the Government and even refusing to accept any reform? Members must bear one point in mind. These appointed Members knew only too well that my motion, that is, the motion they wanted to vote for, was nothing but just a motion. However, they still thought that by doing so, they could at least deliver a very strong message to the Government: Although they were appointed Members, they also felt most dissatisfied. Therefore, having heard the remark of the Secretary for Security, all of them made a special arrangement to tell me at their breakfast meeting that they would vote for my motion that afternoon. The motion carries no legislative effect — this was also the case with the motion at that time.

I can only say that the incident can offer us much food for thought. The sovereign state years back was thousands of miles away from Hong Kong, so if the colonial administration did not rely on the police, was it supposed to count on the several thousand British soldiers here? How could it possibly ensure a peaceful transition? Therefore, the police were in fact the fortress they must rely on as a means of ensuring stability. The sovereign at that time simply could not lightly repeat what it did with the Falklands, dispatching an expeditionary force to Hong Kong over thousands of miles. Consequently, the colonial administration must depend on the several tens of thousand policemen to ensure a smooth transition.

But are we in such a situation now? If it is really considered necessary to introduce institutional reforms (as pointed out by Mr CHIM Pui-chung, from whom we can expect moral support), should the Government consider what further follow-up actions it should take, instead of just making piecemeal adjustments? Members can see that the question of whether the Independent Police Complaints Council (IPCC) should be turned into a statutory body can already illustrate my point. Actually, there is not much difference between the two. There is only one difference. What is it? The only difference is that a statutory IPCC cannot be disbanded easily because it is established by law. For this reason, as the Chief Executive can make administrative appointments to the IPCC, he can actually disband this organization at any time, say, tomorrow, because we are just talking about administrative appointments. Even the Secretariat of the IPCC is made up of Executive Officers seconded from the Government. In contrast, suppose the IPCC is given independent status and manpower tomorrow, the Chief Executive will not be able to dissolve it suddenly because he cannot possibly repeal the ordinance at any time he likes. There is hence a difference.

However, in 1996, when a Bill on the IPCC containing my proposal to confer it with the power of second investigation was put before and passed in the Legislative Council, the Government would rather behave like a bad loser and withdraw the Bill than let the IPCC enjoy any statutory status. How many years have passed since then? Nine or 10 years, right? The Government said that the matter would be followed up in its annual reports. But so far nothing has been said in the Chief Executive's policy addresses. They have been "crying wolf" for as many as four years already.

Frankly speaking, the IPCC itself has been in deep trouble recently. There is the leakage of information, and there are many other incidents as well. As a result, the IPCC has been having a very difficult time over the past one year. It must take remedial measures after the leakage of complainants' particulars, and it has also been sued. I actually think that the IPCC has actually failed to do a very good job in monitoring the Complaints Against Police Office (CAPO) during the past year, and they have indeed been hard-pressed by their work. A member of the IPCC has told me in private that he also sees some problems. Worse still, they have even been wrongly accused by the Government and demanded to shoulder all the blame and refrain from implicating the Government. The reason is that under the existing framework, it is impossible to ascertain who should bear the responsibility, so it is best to settle the matter in Court. All this has made them very discontented.

Chairman, I have commended the ICAC several times earlier. The Secretary should be very happy because he was once the head of the ICAC, right? He has worked in both organizations, so I have in fact been commending the organization he once worked for. However, the problem I am raising is connected with the examples cited by Dr Fernando CHEUNG just now (I did not have enough time to cite all the examples, so I am very grateful to Dr Fernando CHEUNG for doing so). I am referring to the problem that when a person lodges a complaint with the CAPO, he will be asked whether he has any witness. Then, he will be told that if there is no witness, the police may charge him for false accusation.

I have never heard of any case in which a person who suspects a law-enforcement agency of corruption is questioned by the ICAC whether he has any witness. Nor have I ever heard of any case in which the complainant is told that if he does not have any witness, he may be charged for false accusation. It is not true to say that the ICAC has never charged anyone for false accusation. It has done so before. But it has never said something like that to anyone who visits its offices to lodge a complaint. Does this mean that the ICAC is very cunning, so cunning that it will charge the complainant of false accusation only after he has lodged his complaint and an investigation has been completed?

Actually, this should be the only correct attitude. The reason is that at the time of reception, the complainant must not be intimidated on the basis of any assumptions. Besides, complainants are all powerless, so why should they be intimidated in this way? What is the function of the CAPO? Complaints about the excessive use of force are played down to impoliteness. Well, they frequently do so, trying to play down everything. If they had not behaved like this, I would not have advocated the dissolution and fading out of CAPO. They have really been behaving like this. They will literally take the initiative, sometimes paying visits to complainants and trying to talk things over with them. There are also Lay Observers. Yes, the Secretary has referred to Lay Observers. Lay Observers will make several observations, but after this, something will be done. Maybe, they will go to the hospital where a complainant is staying, or they will pay him a visit at home or give him a phone call. Sometimes, they may even ring up his family members. Lay Observers will of course notice all this, but will they say anything? No, no Lay Observers will say anything. As mentioned by Ms Emily LAU, they often say, "Do you really think that we have got nothing better to do?" But will anyone in the ICAC say this to any complainants? Actually, what do the CAPO officers want? They hope that complainants can withdraw their complaints.

Actually, under the existing mechanism, it is not necessary to do so. The reason is that CAPO officers may well advise a complainant to talk with the Division Commander concerned (who is a Superintendent, a high-ranking officer, of course). The Superintendent will talk sincerely with the complainant over a cup of tea, and the complainant may then withdraw his complaint afterwards. This is already one possible solution, so it is not necessary to adopt such a stupid approach, right? Plenty of efforts have already been made, right?

The Secretary remarked just now that there was no bullying of the powerless. But as pointed out by Dr Fernando CHEUNG, in the case of the CAPO at least, such bullying can be observed. How? They will ask, "Have you got any witness?" But do the police always have witnesses in all cases, such as possession of narcotic drugs and other kinds of crimes? Do they always have independent witnesses? The fact is that with or without any witnesses, the police will still press charges. The success or otherwise of prosecution will have to depend on which side is deemed to be more credible by the Court after cross-examination. At the very beginning, before anything is mentioned, the police must not say that unless the complainant has a witness, he will be charged for false accusation. What kind of attitude is this? An organization that takes complaints seriously and genuinely wants to improve itself will not do something like this.

At the end of the day, even in the case of the ICAC, there are always many cases that cannot be investigated, cases that are not pursuable in their words. But they can still gather lots of useful information from the cases received. Such information can be used as intelligence or serve as very useful reference. Or, it may even help the ICAC conduct a comprehensive assessment of a certain issue or determine the deployment of resources. For this reason, they very much welcome the public to lodge complaints.

According to the Secretary, a thorough investigation into each and every case will be conducted. I hope Members can note that the IPCC comprises 22 members. Of these, one is the Chairman and three the Vice-Chairmen. Two of the Vice-Chairmen are Members of the Legislative Council. Mr LEE sitting behind me is one of the Vice-Chairmen. As far as my understanding goes, all the 2 000 or so cases received in 2005 were examined by the Chairman. On the other hand, these 2 000 or so cases were divided among the three Vice-Chairmen for examination (As far as I know, this was at least the case several years ago). In other words, every case will be examined by the Chairman and one

Vice-Chairman. But I do not know which Chairman or Vice-Chairman dares to claim that he has examined all the cases assigned to him.

Without an independent system, it is often possible to tamper with the handling of a case. Members should note that one simply cannot say that the police do not make enough efforts. Recently, there have been a number of cases that cause huge public outcries. These cases are reported every day in the press. If the police decide to take actions, its investigation can be very thoroughgoing. But if they decide not to take actions in a certain direction, they will simply brush it aside. I shall say more on this later on. After the Coroner's Court has completed all its hearings, I shall tell Members how many directions the police have skipped in its investigation, and how they have failed to investigate certain aspects thoroughly and fairly. I shall say more on this later. If the police decide to investigate a case, its investigation can be very thoroughgoing. Members will certainly be surprised. For example, they can even find out how many masks were used and the number of people involved. They have also checked the Octopus system and the super computer. They will go everywhere, even all parts of the world, for investigation. But if they decide not to conduct any investigation, or if they decide to give up any direction of investigation, they can always do so very nicely, without arousing any public attention whatsoever.

Therefore, we simply have no faith in the investigation conducted solely by the IPCC or any other independent body commanding no public confidence. The IPCC, composed of some 20 members not working on a full-time basis and assisted by some Executive Officers (I mean no offence to the Clerical Officers and Executive Officers concerned), cannot possibly conduct any credible investigations. I have therefore proposed that the IPCC may perhaps employ some barristers well-versed in criminal law to examine cases for it on a full-time basis. Since they are frequently engaged in *voir dire* and the preparation of statements, they may easily find out whether there is anything "unusual" in a case. I have been advocating this idea for a decade, but the Government still refuses to accept it. Why? The Government may well think, "If the proposal is accepted, all things will be exposed to them. There will be big trouble." The reason is so simple. Members please note that even under the existing framework, they are reluctant to do anything because it is too risky. Once the proposal is adopted, many things will be exposed and they will be in deep trouble. The Government is also reluctant to consider many other reform proposals. The head of the IPCC is not a police officer (The proposal is put

forward by the IPCC itself), but they do not want to make any changes. They also refuse to accept the proposal of conferring the IPCC with the power of second investigation.

All these proposals can enable us to see what has been going on. Once we look at all these proposals, we will know that the Government will surely disappoint Mr CHIM Pui-chung because it simply does not want to introduce any reform. It only wants to introduce some piecemeal changes that will not touch the core issues. All these piecemeal changes are very fragmentary — turning the IPCC into a statutory body, the appointment of Observers and the inclusion of political party figures in the IPCC. All these are useless changes that cannot solve the core problem. The core problem is credibility and independence.

The Secretary talks about professional autonomy. We have been talking about this for some 30 years, right? Why are the circumstances in other countries different? The reason is that in other countries, there may be dozens of police forces. There are also the federal police. In case it is necessary to conduct investigations into any major abuses of power, it is always possible to ask the police of one state to investigate the police of another state. Or, the federal police may also be asked to investigate the abuses of power by the police force of a certain state. This can ensure professional autonomy. In Hong Kong, it is not impossible to do so. If we really want to establish such a body, there will always be sufficient manpower. Serving police officers can be seconded to it. Police officers about to retire or retired police officers can be deployed to work in the new organization for several years. Or, people with the experience of serving in foreign police forces can be recruited. What is more, many ICAC officers have been engaged in probing into corruption cases in relation to law-enforcement agencies for a very long time, and they are thus very familiar with such problems. All this can show that the organization can certainly function smoothly.

However, the situation today reminds me of what the several appointed Members said in 1992. At that time, the police were very overbearing and exerted very heavy pressure on the Government. The Government simply did not dare to do anything, so it turned down all meaningful reform proposals.

I believe that Mr CHIM Pui-chung is well-intentioned. But I do not believe that our Government will do so now. Maybe, if we now exert heavy pressure on it and speak on behalf of the public, it may start to consider the matter.

I therefore hope that Members can consider one thing. The several appointed Members of 1992 mentioned by me all realized that if more Members supported the motion, it would be possible to deliver a stronger message to the Government. If Members can also realize this, they should cast a positive vote today.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr

Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr LEE Wing-tat and Mr Ronny TONG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, five were in favour of the amendment and 21 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 10 were in favour of the amendment and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**MR JAMES TO** (in Cantonese): Chairman, I move that head 122 be reduced by \$80 million in respect of subhead 103, which is listed under "Rewards and Special Services". According to the Government's lobbying letter sent to Members during the past two days, it is said that — this is a government document, and I quote — it "involves some secret operations of the police, including the provision for rewards and 'informer's fees' as well as the money required for the acquisition and maintenance of some equipment".

Chairman, as a responsible Member, I feel that I need more information before I can approve the allocation of this \$80 million. Why? First of all, let

me clarify one point. I do not demand to know who or "which informers" are paid the amount of money, or on "which cases" the money has been spent. However, all of us seem to think that such information definitely cannot be disclosed. In fact, this is not true. In parliaments or councils of overseas countries, such sensitive expenditures would be heard and examined in special inquiries conducted by special groups formed by members of parliamentary assemblies. Let me cite an example. There is an intelligence committee in the United States that could even examine some very confidential expenditures of the Central Intelligence Agency (CIA) or the present National Security Bureau. This committee may ask questions; demand the provision of information, call files, and require the Head of CIA to answer questions. If he refuses to answer questions or provides false answers, he may throughout his life be subject to prosecution on the offence of perjury. Many deputy heads of CIA had been prosecuted for perjury when they were very old, and in some cases, amnesties were eventually granted by the Presidents.

I would like to clarify that today I do not demand to be informed of these expenditures. But, please bear in mind, a responsible parliamentary assembly in fact should set up special committees to examine expenditures in this regard. In the past, both Ms Emily LAU and I have made requests in this direction. I am just requesting access to more information, so that we can act more responsibly by finding out more clearly what kinds of items are involved. For example, I have been asking how much of the money is spent on manpower and the acquisition of equipment respectively. According to the Government, this amount of money involves manpower expenditure as well as spending on the acquisition of equipment. But how much is spent on acquiring equipment and how much is not? Here a sum of \$80 million is involved, but the answer is "information cannot be disclosed". I asked them: How much money is spent on anti-terrorist operations and how much is spent on combating serious crimes? Again, the answer is "information cannot be disclosed".

Please do bear in mind, in other places — of course, different places would have different regulations in place — part of such information would be disclosed. Why is only part of the information disclosed? Because that part is already open information. Since it has a council of its own..... that is a special committee, which I have mentioned earlier, has already conducted some detailed examination, so even if the information has not been made public or disclosed in detail, members can still ask in-depth questions in the meetings.

I would now talk about some historical facts. Why? It was because what I worry most is this \$80 million, or larger amounts or smaller amounts of money could have already been spent on some disgraceful or dirty acts. This \$80 million — the amount in the past must be more than \$80 million, was spent on the expenditure of the Special Branch in the era of the British Hong Kong Government. Both the Police Force and the Independent Commission Against Corruption (ICAC) can undertake such so-called dirty political surveillance through other departmental expenditures. However, since such surveillance duties are more meticulous and stringent, some of the expenses are already not accounted under this \$80 million. What does it include? For example, the Criminal Intelligence Bureau (CIB), which is commonly known as the "doggie team", entails an expenditure of several tens of million dollars. But their expenses are not covered by that \$80 million.

Besides, some of the expenses of the Special Duties Unit (SDU) are also not covered by this expenditure. The SDU will soon purchase a set of telecommunication equipment, which can be used in some covert surveillance duties or under certain situations. But the fund required will be allocated by the Finance Committee and once again not fall under this expenditure of \$80 million. During the past 10 years, the CIB has replaced some of its equipment, which is not the same as those of the SDU, though both sets of equipment can be used in covert operations. Besides, they can also be used in some disgraceful ways. But both these two items of expenditure are approved by the Finance Committee, yet not covered by this \$80 million. On the other hand, the Technical Support Group is especially tasked to undertake eavesdropping duties, break-in, camouflage and cover-up work. It employs several hundred persons with a total expenditure of tens of million dollars. But still its expenditure is not covered by this \$80 million.

Since so many expenditure items do not fall under this \$80 million, in other words, this \$80 million is to be used in some absolutely confidential ways. Besides, some confidential expenses can even be met by instalments. For example, if even more secret equipment has to be acquired, then the Government does not have to pay through other sources and can deduct the money required from this \$80 million. The Government may save up some money each year and then it can purchase the required equipment in instalments. Of course, it does not have to really save up the money, but it can buy it in instalments or hire some manpower by stages to act as undercover agents in order to penetrate

certain organizations which it consider necessary to put under surveillance. Such work can be done with this \$80 million.

However, the Government says that the situation has improved. For example, in the past it was not necessary to explain the part of money from this \$80 million for eavesdropping. But now, under the existing law, it will account for this aspect of work. As I have said, I have already..... I am not going to repeat them..... In the discussion on the surveillance Bill in last July, many of the amendments moved by Ms Margaret NG and I could in fact strike a balance between confidentiality and accountability, thus putting our minds more at ease without worrying that the Government might do something nasty. However, the Government refused to accept all the amendments. Consequently, all we can get are just some rather superficial figures.

However, when we examined the Budget..... Since the Budget was released in April, and the surveillance legislation governs the period between July of last year to July of this year, such that the panel should submit a report to the Chief Executive covering the period from July to 30 June of the following year. When we examined the Budget, when Members had to decide whether they should approve the allocation of this \$80 million, I asked the Government: Given that Justice WOO's covert surveillance panel already has a budget of over \$10 million, and under this amount of over \$10 million of surveillance expenditure, how many cases have been approved? And can the authorities submit to us a nine-month report? Furthermore, according to the law, such information can be disclosed. All I am asking the Government is only the provision of figures for the nine months.

I have raised questions by way of issuing an open letter. However, after I have exhausted all the methods, the Government continued to not accept our requests. I do not know whether this is the position of the Government. Anyway, the official in charge of the amount of over \$10 million, that is, the secretary working under Justice WOO, decided not to provide any information to us. This had put us, Members, or at least me, in a very difficult situation. What kind of situation was it? If the Secretary said that there was something that I might know, I could consider whether this \$80 million should be allocated. But, most unfortunately, although the Government had already got the figures for these nine months, and such figures were by law information that can be disclosed, it still refused to provide us with the information which would serve as

the rational basis for our examination of the Budget. What kind of attitude was this? When the Secretary gives us his reply later on, I do not know whether he can tell us if he thinks Justice WOO's secretary had done his job properly because he was not forbidden by law to provide us with the figures for the past nine months. If he thought that was not the proper procedure, but since a Member had made the request, he might pass the figures of these nine months to the Chief Executive who would then pass them to us via the Secretary. He could do that. If he was restricted by factors like the law, he could solve it from a technical point of view. But the Government has not done that. Even for the small amount of information that can be disclosed, as the Secretary has said, none of it has been provided to us up to this very second when our deliberation is under way. It is exactly like what happened last year. There has been no progress at all. How can he explain this?

On the other hand, if some designated expenditure has not been utilized at all, it is indeed a very serious problem. If some of such money is designated for use as open or secret rewards, that is, for buying information, how much money can the Government use on this? When major cases are involved, such as murders, hiring a killing service, serious assaults, have we offered some rewards? Yes, the Hong Kong Jockey Club (HKJC) did so recently. Since horses were harmed, it became necessary to offer a reward of \$1 million to \$2 million. But this is just done by the HKJC. Can you see what was done in a case we consider important..... Of course, since Mr Albert HO is the Chairman of the Democratic Party, and a Member of the Legislative Council, we naturally think that it is very important. But there are always cases of extreme grievances in society. The Chief Executive had said that he would ensure that such a case of extreme grievances would be pursued even if the culprits had gone to the remotest parts of the world. But was any reward offered in the case? No reward was offered in the first stage because we had some video recordings from some closed-circuit televisions. We could keep reviewing several hundred tapes of video recording. Our superintendent and our chief inspector had been working very hard in the first stage and successfully found the "hitman" and persecuted him. What has happened now? Everything has come to a halt. While we do not have any further lead, has any rewards been put up? Have there any large rewards been put up?

I have said this many times before. Since the Government said that this \$80 million was for the provision of open and secret rewards, actually have any

open or secret rewards been offered? There might have been some secret rewards, but have any open rewards been offered in this case? I do not know. If the Government has not made use of the \$80 million, even in such an important case in which someone has commissioned a killing service, then what on earth has the Government done? If the Government is unwilling to spend money on worthy causes, then it would make me suspect that the Government actually prefers not to crack the case — it just stops at having caught the "hitman", but is unwilling to catch the man behind the scene.

What has the Government done? It just proceeds to buy some equipment in instalments, employing more manpower to do some dirty jobs. I say so just because I have been monitoring the Government very closely. For the CIB, the Technical Support Group and other departments that may need to purchase things, I have also been monitoring them closely. When expenses cannot get any reimbursement, they can easily get it from this amount of money. Therefore, regarding homicide cases, let us just forget them; for other assault cases, just forget them; issues that the people are concerned about, just forget them. What is most important lies in the future. In the next five years of the Chief Executive's second term of office, the Government may have to enact legislation to implement Article 23 of the Basic Law; the Government may have to re-establish the Special Branch. So, it is better for the Government to save up some "resources" now and then implement the projects in stages.

You may as well describe my suspicion as pure "conspiracy theory", or simply a presumption. But if the Government has to do such things, it is possible that it will make use of this amount of money for the purpose because it would not be possible to make use of other expenditures in the Budget to carry out such work. You may simply consider my words as pure "conspiracy theory" or just a presumption. But if the authorities have to refute it, they should provide better information to dismiss this presumption. And insofar as history is concerned, this amount of money is used as the expenditure of the Special Branch. It has always been done in this manner.

Let me cite an example. There is an Operation Review Committee (ORC) under the Independent Commission Against Corruption (ICAC). Several Members of this Council are also members of the ORC, and they have the responsibility of examining the reports, or even the raw data, in a very confidential manner. If there are questions, some behind-the-door supervision

could be implemented. Has it ever occurred to the Government that — in particular, the Secretary has once been the head of the ICAC, he should know what I am talking about — Has it ever occurred to the Government that it can enhance its public credibility under a similar system? If the Secretary says that he cannot trust all the 60 Members, then is it possible to at least follow the practice of the ORC of the ICAC by appointing a Member from this Council who has the trust of everyone to covertly assist us to monitor this amount of \$80 million? The answer is in the negative. I have exhausted my words.

I do not know how on earth the Government will reply. I believe my arguments are very strong in pointing out that it is possible for the Government to — this possibility cannot be ruled out — use the provision under this subhead, be it \$80 million, \$60 million or \$100 million, to buy intelligence or hire undercover agents in instalments to investigate and monitor some organizations, or acquire some equipment to do some disgraceful work. These are my worries. I have spelt them out in very explicit terms. But in fact, the Government can ease my worries while confidentiality can still be maintained at the same time.

I have devoted myself to security affairs for more than a decade. So I fully understand what kind of actions will run the risk of compromising the safety of our undercover colleagues, people who risk their lives in serving us. But if the Government uses this as the excuse, then it will lead to a very interesting situation. It is because the Government has commissioned too many undercover operations. If eventually some of such cases shall end up in some prosecutions in the Court, very often a lot of the information will have to be disclosed. Even in some recent cases heard in the Coroner's Court, substantial details of the investigation techniques were disclosed. Such details would not be disclosed by the Government in the past. Such details include how identification documents are verified; how data are checked; and we have now found out that the Octopus cards can..... Of course, the criminals will change their Octopus cards more often now. In the past, people will only change their simcards, but now they will also change their Octopus cards. We should not use the same Octopus card all the time; otherwise, your whereabouts will be disclosed. This explains why we need to have the legal procedures. Why do we need to have the legal procedures? Because the Government has to make itself accountable as required by the laws. Likewise, when the Government requests the allocation of funds, it has to make itself accountable to the Council and to the people. These are issues on the same plane.

I hope the Government can seriously consider my earlier suggestions. Even if the Government does not agree completely with my assumptions, I still feel that I have provided the Government with many directions of thinking, and some more progressive methods which may improve the situation.

Chairman, I beg to move this amendment.

**Mr James TO moved the following amendment:**

"RESOLVED that head 122 be reduced by \$80,000,000 in respect of subhead 103."

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

**MS EMILY LAU** (in Cantonese): Chairman, I am speaking in support of Mr James TO's amendment. This issue is also like "paying tribute to our ancestors twice a year in the Ching Ming Festival and Chung Yeung Festival". It simply happens again. Secretary, I hope you can do something about it after the laugh, otherwise, there is no way for you to get the job done.

Mr James TO has mentioned the letter of the Secretary just now. In the letter, the Secretary said that these expenditure items involved secret operations of the police. Such expenditure items include rewards, informer's fees and the acquisition and maintenance of some equipment. These expenditure items are essential for combating threats such as terrorist activities, serious crimes and narcotic offences, and so on. We must be exceptionally cautious with the disclosure of such information to prevent criminals from benefiting from learning about details of operations and enforcement capability of enforcement agencies. Chairman, this is by no means a clarification. Besides, I really do not know what he means by "and so on" in "serious crimes and narcotic offences, and so on". Does that refer to the surveillance of political activities or other sensitive activities? I believe the Legislative Council should be informed of this.

Chairman, we went to the Fanling Headquarters of the Special Duties Unit on 12 April. They had to apply for a funding of several tens of million dollars for the acquisition of telecommunications equipment. We did see something in the process. At that time, some police representatives told us that, with the new

equipment, they would be able to do a lot of things, and the future walkie-talkies will have very powerful functions, and they also said that more facilities would be installed in all the 18 districts of the territory. Upon hearing this, I was shocked and asked them what kinds of facilities would be installed. Later on, some Honourable colleagues told me that there was no need for me to find out what kinds of equipment they wanted to have, and in fact, all such equipment had already been installed. Chairman, you had also disclosed that you had once been eavesdropped before and you had also been a victim who had badly suffered. Hence, my over-reaction was uncalled for. However, our sensitiveness and fear are genuine. The Chairman was once a victim, and I believe there are even more such victims among us, therefore, the authorities' approach has failed to allay our worries.

You may well ask whether or not there will be a problem for me to disclose such sensitive issues in such a high-profile manner. I can understand this point. That is why parliamentary assemblies elsewhere have established some special statutory bodies to investigate and conduct hearings on such issues. Even the methods of selection of members are stipulated. Everything is stipulated: What can be disclosed and what cannot be disclosed. We have talked about this issue in the Legislative Council for many years. But this cannot be implemented just on our own initiatives, because a piece of legislation has to be enacted for the purpose. Even if we proceed to establish a committee to handle this, the authorities will simply ignore us. How can we make them willing to attend our meetings? However, if there is a piece of legislation explicitly providing that a special committee would be established in the Legislative Council, and specifying who would be responsible for listening to sensitive information, what they should do, what kinds of attributes these persons should possess, how they should take an oath of secrecy and how they are forbidden to disclose information, and the criminal liabilities involved, and so on, I think all of these can be discussed. But the Secretary has simply ignored us altogether. The authorities have never proposed anything. In short, and ultimately, he will not tell you anything because he has already secured enough votes. That explains why it can adopt such an attitude.

However, I also hope Honourable colleagues can understand that there are in fact some reasons for other countries to establish such committees. We should also do the same. I shall go to the Panel on Security and raise this issue officially. Our Secretariat has already compiled some information which is by no means big secret. In Britain, the United States and other countries, there are

special ad hoc committees in the parliamentary assemblies to deal with such sensitive issues. For example, one of such committees could be responsible for security or related affairs, and it is stipulated what kinds of authority and responsibility it will have; how it is established; and how it will monitor the executive authorities, and so on. I believe we should start activating the process. It is because if we wait for the authorities to take the initiative, they may never do it. Consequently, the Secretary would rise to say something and read out something, and then his job is considered done. Chairman, I hope he would not read his letter once again. Please do not waste our time. Both Mr James TO and I have read out his letter in full. It is really too much because it contains only several lines. May I ask him not to read out the letter anymore. If he does not come up with any new ideas, then he had better remain silent.

However, I still think that he should examine the issue, or he may give us his response on whether this Council should set up such a committee to handle such affairs and monitor how the authorities handle such issues on behalf of other Honourable colleagues and society. I do not know whether certain information can be publicly disclosed, but at least such information should be seen by someone. It seems that the Independent Commission Against Corruption (ICAC) has also established a committee to handle such issues. But there is none for the Police Force. Sometimes we are really not too harsh in labelling them as "officers subject to no control".

Therefore, Chairman, I support Mr James TO's amendment. I hope the Secretary can realistically respond to the people's worries — including the Chairman's worries. She cannot say anything just because she is not in a position to deliver any speech. Even she was eavesdropped and put under surveillance, so how can we not worry?

I so submit.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, the authorities oppose the amendment moved by Mr James TO to delete the

expenditure estimate of \$80 million in its entirety under subhead 103 of head 122 of the Hong Kong Police Force, that is, "Rewards and Special Services".

The expenditure item of "Rewards and Special Services" relates to covert operations of the police. Although Ms Emily LAU has requested me not to repeat this, I am obliged to do so. (*Laughter*) The covert operations include anti-terrorist, serious crimes and anti-narcotics operations. The expenditure is of vital importance to the Police Force in upholding public security and maintaining law and order in Hong Kong. I have to reiterate here that these operations are in no way related to any political purposes.

We agree fully that the use of public money by the executive authorities must be accountable to the Legislative Council and the public but, owing to the confidential nature of the operations, a proper balance must be struck between transparency and accountability and the effectiveness of law-enforcement agencies. We must take into account the serious consequences that may be brought about by excessive disclosure of information to give an opportunity to criminals, especially those from crime syndicates that are getting more and more sophisticated and which possess abundant resources, to detect operation tactics of the police by analysing the distribution and trends of the related expenses. Consequently, these criminals may evade legal sanction and even endanger the personal safety of the officers concerned and public safety. Such disclosure is totally not in line with public security considerations.

Regarding monitoring, the subhead of "Rewards and Special Services" under the Police Force is regulated by a stringent mechanism. With respect to internal monitoring, the Police Force have formulated detailed approval and monitoring procedures for this subhead, including the requirement that every item of expenditure be approved by a senior police officer and all details and accounts are subject to regular and surprise inspections. Furthermore, the subhead is subject to regular and surprise inspections by the Audit Division of the Police Force as well as independent audits made by senior officers of the Audit Commission pursuant to the Audit Ordinance. These will ensure that officers in charge of this subhead will strictly comply with all fiscal and accounting rules of the Government.

In order to enhance transparency of the expenditure concerned and provided that the enforcement capabilities of the Police Force are not affected, the authorities have in the past few years provided the Legislative Council with relevant statistical figures, such as the actual numbers of persons granted rewards

and the actual amount in total. The Interception of Communications and Surveillance Ordinance passed by the Legislative Council last year set out clearly authorization criteria for interception of communications and covert surveillance and the establishment of an independent commissioner to monitor compliance by law-enforcement agencies with relevant requirements under the Ordinance. Each year, the commissioner must compile information covering all statistics on relevant operations and submit a report to the Chief Executive, who will in turn arrange to have the report tabled to the Legislative Council. Hence, the public will be in a position to know the statistical information regarding covert operations carried out by law-enforcement agencies in pursuance of the Ordinance. This will greatly enhance the transparency of the relevant operations.

Mr James TO mentioned earlier that he had requested the commissioner to give him an interim report, but the commissioner considered that the request should not be made until the middle of this year. This is the commissioner's independent opinion. I would like to reiterate that the commissioner is not accountable to the Security Bureau under the law. Neither the Secretary for Security has the authority to request the commissioner to furnish him with an interim report.

The subhead of "Rewards and Special Services" is indispensable to combating serious crimes and keeping peace and order in Hong Kong. Furthermore, the authorities have been striving to achieve a proper balance between the transparency and accountability of the relevant covert operations and the effectiveness of law enforcement. If the amendment of Mr TO is passed, it would deal a serious blow to police work and hence produce a considerably negative impact on law and order as well as security in Hong Kong. I therefore urge Members to oppose this amendment moved by Mr James TO.

Thank you, Madam Chairman.

**MR JAMES TO** (in Cantonese): Chairman, according to the Secretary's reply just now, the Government will not use the \$80 million for political purposes. Such a comment must be phrased very carefully in the reply because he may be held responsible for this in the future. The Secretary said that the money would not be used for political purposes. But we must note that it may be used for crime prevention. What do I mean by crime prevention? Some may of course

argue that no legislation has yet been enacted to implement Article 23 of the Basic Law. But I must point out that many existing legislative provisions are about treason and theft of state secrets. And even unlicensed assemblies that may affect, seriously affect, traffic are also regarded as offences. Even the prevention of unlicensed assemblies each with several dozen participants will necessitate infiltration, wire-taping and even undercover operations. We must bear in mind, Chairman, that according to the law enacted last year, as long as an undercover agent does not make use of any wire-taping devices, the notes he makes in the course of work shall not be regarded as covert surveillance. Therefore, the \$80 million may well be spent on employing undercover agents or paying for the infiltration of major political parties or trade unions. The former Special Branch used to do such work in the past. Or, the money may be spent on infiltrating the transportation industry because they are most concerned about this industry. It is indeed easier to dissuade employees of the transportation industry from going on strike through political influences. But if the situation is different and other trade unions are involved, it will be necessary to resort to infiltration and buy some intelligence, right? It is always possible for something like this to happen. But it can be argued that no political purposes are involved and all is just about the prevention of petty offences. What is meant by this? It means that it is always possible to use the money for the prevention of what some in society will regard as political offences. Consequently, the explanation that the money will not be used for political purposes will not make the public believe that political surveillance will not be involved. The reason is that political surveillance may be required even for preventing a certain trade union from inciting some drivers to go on strike or block a major trunk route. Or, even when too many vehicles are about to take part in a procession, they may also resort to political surveillance. Sometimes, there are just dozens of participants, but the authorities still want to prevent them from leaving the Victoria Park. So, they want to have some intelligence to enable them to know whether the participants intend to march beyond the Victoria Park. In that case, the money may also be used for buying intelligence. It is useless to claim that political purposes will not be involved because our worry will not be dispelled.

The Secretary has replied that they will exercise stringent control, and that surprise inspections will be conducted. I do not know whether or not the Secretary and his staff could remember the question I raised at a special meeting of the Finance Committee when they were drafting their reply speech. I asked why there was such a coincidence, why in the previous three years, the

Commissioner of Police, Deputy Commissioners of Police, Senior Assistant Commissioners of Police, Assistant Commissioners of Police and Divisional Commanders all conducted the same number of inspections. I mean, three years ago, the Commissioner of Police conducted eight surprise inspections. Last year, there were also eight such inspections. And, this year, there are eight inspections again. It seems that nothing further will be done once the "target" is attained. If all these were really surprise inspections, there would not have been such a coincidence and the numbers of inspections would not have been exactly the same. There would not have been such a coincidence unless they thought that since there were eight inspections last year, it would not be good enough to conduct only seven this year. So, they decided to conduct eight inspections. And, they might think that it was a bad idea to conduct nine inspections because more inspections would have to be conducted next year, or Mr TO would not be happy. But why was there such a coincidence, and why did the number remain exactly the same year after year? This can tell us their attitude, whether they respect the mechanism and whether this is in fact their target.

Ms Emily LAU used the expression "Spring and Autumn Sacrificial Rites" just now. This is probably the case. There should be one sacrificial rite in spring and another in autumn, so they will conduct an inspection when the time comes. They will just flip through the R&SS booklet, and when no problem is detected, they will just leave. What should warrant more attention? It is better to place a heavier emphasis on communication with front-line staff. Why bother about the booklet at all? All the figures are so neat, and the numbers of inspections are exactly the same. No one will believe that it is not a fix. If they really respect the mechanism, why is the situation like this now? The figures for three years are exactly the same. Are there in fact some targets — for example, the Commissioner of Police should conduct at least eight inspections and Senior Assistant Commissioners of Police at least 20 inspections? There cannot be any explanation. The trick has been exposed. How can they still talk about any respect and random inspections?

The Secretary has also said that the Commissioner concerned is independent and Justice WOO is not his subordinate. He therefore argues that this cannot be done. But if the Commissioner does not compile the report..... I am not asking the Commissioner to do so. Although I raised such a question in the Finance Committee, the Government could still ask the police to do the job once it learnt that there was such a concern among Members. For example, they could have released the number of applications and the number of cases that

were turned down. If the Secretary and the police can give the statistics on April last year to April this year..... I may also ask for the number of inspections from July last year when the legislation was passed to April this year. Or, I may ask for the number of applications. Actually, the police or the law-enforcement agencies concerned should all collect the relevant information and then provide us with the statistics on all this, because there is a new mechanism. But the authorities have not done so. I respect the fact that the commission headed by Justice WOO may decide not to provide any information. But then, if Members do not have any information, it will be very difficult for us to conduct any scrutiny. What I mean is that everybody is faced with difficulties. If the Government can do the same thing through a third party without affecting the work of Justice WOO and Members, all parties will get what they want. This is actually possible. But the Government has chosen not to do so. To sum up, the Government's mentality is that it is always better not to do anything lest we may have more to say to it. It therefore thinks that it is better not to do anything. This mentality is not quite so proper.

Finally, the Government argues that if operational details are disclosed, the law-enforcement capabilities will be affected. Have I ever asked for any operational details? Can the breakdown of the \$80 million into manpower and equipment be regarded as the disclosure of operational details? Will this affect the law-enforcement capabilities?

We have learnt from the hearings of the Coroner's Court that it is even possible to analyse the background noises at telephone kiosks and to match the information in the Octopus system. I think all this may have some effects. But we cannot do anything because their disclosure is required under the law. Similarly, I fail completely to imagine why these two items cannot be disclosed. I welcome the Secretary to offer an explanation to us behind closed doors. I cannot convince Honourable colleagues why it is impossible to break down the \$80 million into manpower and equipment. What is the only reason for this? The only reason may be that there are many undercover agents and informants in various organizations and there is a need to buy intelligence regarding the prevention of what society generally regards as political offences, such as assemblies not preceded by any applications. Many undercover agents and informants have been buying such intelligence. As a result, the Government does not dare to make any disclosure.

But the question remains. Even if all the statistics on these two items are disclosed, what will be the effects on operational details and law-enforcement

capabilities? A crime syndicate may be very professional and powerful, but can it possibly do anything after learning that the expenditure is \$30 million this year, and that \$40 million or \$20 million was spent last year? Basically, a good part of such expenditure goes to other aspects, so there is simply no way to figure out the fluctuations. Therefore, what the Government says is simply nonsense.

I have omitted one organization so far. I have mentioned many organizations whose expenditure does not have anything to do with the \$80 million. I now want to mention one more. It is the "B" Department (Crime and Security) of the police. This department comprises several hundred people and spends tens of million dollars a year, but its expenditure is not covered by the \$80 million. This organization handles the most sensitive issues. I have good reasons to believe that if the Special Branch is really to be re-established one day, this department will certainly be the backbone of the re-established Special Branch.

Chairman, I must make an appeal to Members here. Even if they do not want to say openly that they cannot understand the matter, they should still talk with the Government in private. This expenditure of \$80 million is so mysterious, so..... Money is not spent on where it is needed. Just now, the Secretary failed to offer any answer in regard to some major crimes. In a certain case, the "hitman" has already been brought to justice, and the public all want to find out the mastermind. We all know that the money paid by the mastermind to a "hitman" will not be just tens of thousand dollars. And, the evidence presented in Court also suggests that the sum was not so small. Without spending several million dollars or even more, how can we buy any intelligence? How can we create any rift or dispute among them, so as to make it possible for evidence and clues to emerge?

The Government has not spent money on where it is needed. Instead, it has sought to maintain confidentiality for major sums of expenditure and items that should not be kept secret. And, it has also categorically turned down all requests of this Council for improving the transparency and accountability of the system, including the committee system proposed by Ms Emily LAU and me.

All is in fact very simple. Under the existing operational framework, once we press the buttons, this sum of \$80 million may easily become the expenditure for the Special Branch.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat and Mr Alan LEONG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying, Mr CHEUNG Hok-ming and Mr Albert CHENG voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the amendment and 20 against it; while among the Members returned by geographical constituencies through direct elections, 24 were present, 12 were in favour of the amendment and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the sum for head 122 stand part of the Schedule.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the Schedule stand part of the Bill. According to Rule 68(4) of the Rules of Procedure, this question is neither amendable nor debatable.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): We are to consider the clauses of the Bill. I now propose the question to you and that is: That the following clauses stand part of the Bill.

**CLERK** (in Cantonese): Clauses 1 and 2.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1 and 2 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **APPROPRIATION BILL 2007**

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the

Appropriation Bill 2007

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Appropriation Bill 2007 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes.

(Mr Albert HO and Mr Martin LEE hurried into the Chamber at this juncture)

**PRESIDENT** (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Mr James TIEN, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Fong-fat, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr KWOK Ka-ki, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Mr Albert CHENG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the motion.

Mr LEUNG Yiu-chung and Mr Albert CHAN voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 53 Members present, 50 were in favour of the motion and two against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CLERK** (in Cantonese): Appropriation Bill 2007.

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 25 April 2007.

*Adjourned accordingly at half-past Two o'clock.*