

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 21 May 2008

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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.

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

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

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

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

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

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

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

DR THE HONOURABLE YEUNG SUM, J.P.

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

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

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

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

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., 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

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, J.P.

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.

**MEMBERS ABSENT:**

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

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

**PUBLIC OFFICERS ATTENDING:**

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

THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE FREDERICK MA SI-HANG, J.P.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

THE HONOURABLE MATTHEW CHEUNG KIN-CHUNG, G.B.S., J.P.

SECRETARY FOR LABOUR AND WELFARE

THE HONOURABLE EDWARD YAU TANG-WAH, J.P.

SECRETARY FOR THE ENVIRONMENT

THE HONOURABLE EVA CHENG, J.P.

SECRETARY FOR TRANSPORT AND HOUSING

**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>
International Organizations (Privileges and Immunities) (Bank for International Settlements) Order.....	116/2008
International Organizations (Privileges and Immunities) (International Monetary Fund) Order .....	117/2008
International Organizations (Privileges and Immunities) (International Bank for Reconstruction and Development and International Finance Corporation) Order.....	118/2008
Legislative Council Ordinance (Amendment of Schedule 5) Order 2008 .....	119/2008
Maximum Amount of Election Expenses (Legislative Council Election) Regulation .....	120/2008
Securities and Futures (Levy) (Amendment) Order 2008 ...	121/2008
Securities and Futures (Investor Compensation — Levy) (Amendment) Rules 2008 .....	122/2008
Air Pollution Control (Fuel Restriction) (Amendment) Regulation 2008.....	123/2008
Building (Planning) (Amendment) Regulation 2008 .....	124/2008
Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) (Amendment) Regulation 2008 ...	125/2008
Control of Chemicals (Amendment) Regulation 2008....	126/2008
Dutiable Commodities (Amendment) Regulation 2008 ...	127/2008

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Firearms and Ammunition (Amendment) Regulation 2008...	128/2008
Firearms and Ammunition (Storage Fees) (Amendment) Order 2008 .....	129/2008
Pawnbrokers (Amendment) Regulation 2008.....	130/2008
Massage Establishments (Amendment) Regulation 2008 ...	131/2008
Telecommunications (Carrier Licences) (Amendment) Regulation 2008 .....	132/2008
Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2008.....	133/2008
Registration of Persons (Invalidation of Identity Cards) Order 2008 .....	134/2008
Antiquities and Monuments (Declaration of Historical Buildings) Notice 2008 .....	135/2008
Noise Control (Construction Work Designated Areas) (Amendment) Notice 2008.....	136/2008
Companies Ordinance (Amendment of Eighth Schedule) Order 2008 .....	137/2008
Companies (Amendment) Ordinance 2003 (Commencement) Notice 2008.....	138/2008
Companies (Amendment) Ordinance 2004 (Commencement) Notice 2008.....	139/2008
Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (Commencement) Notice 2008.....	140/2008
Copyright (Amendment) Ordinance 2007 (Commencement) (No. 3) Notice 2008.....	141/2008

Copyright (Amendment) Ordinance 2007  
(Commencement) (No. 4) Notice 2008 ..... 142/2008

Mandatory Provident Fund Schemes (Amendment)  
Ordinance 2008 (Commencement) Notice..... 143/2008

#### Other Papers

No. 95 — Report of changes to the approved Estimates of Expenditure approved during the fourth quarter of 2007-2008 (Public Finance Ordinance : Section 8)

No. 96 — The Government Minute in response to the Report No. 49 of the Public Accounts Committee dated February 2008

#### ADDRESSES

**PRESIDENT** (in Cantonese): Address. The Chief Secretary for Administration will address the Council on "the Government Minute in response to Report No. 49 of the Public Accounts Committee dated February 2008".

#### **The Government Minute in response to the Report No. 49 of the Public Accounts Committee dated February 2008**

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, laid on the table today is the Government Minute responding to Report No. 49 of the Public Accounts Committee (PAC) of the Legislative Council.

When presenting the PAC Report No. 49 on 20 February, the Chairman of the PAC set out in detail the comments of the PAC regarding the outsourcing of the management of public rental housing (PRH) estates in the Director of Audit's report. Details of the Government's response to the conclusions and recommendations in the Report are set out in the Minute. Today, I would like to explain the key measures taken in the relevant areas.

In relation to the outsourcing of the management of PRH estates, we fully agree that it is important to protect non-skilled workers engaged in outsourcing contracts awarded to the property services agents (PSAs) and contractors in the management of PRH estates. The Housing Department (HD) has implemented stringent measures to step up action against employment-related irregularities and strengthen the supervision of PSAs and contractors. The HD has issued guidelines regarding various new regulatory measures, which clearly stated that a hard-line approach will be taken against defaulted PSAs and contractors. The guidelines call for strict enforcement of the Demerit Point System and referral of all suspected cases of contravening employment-related ordinances to the relevant government departments or agencies for law-enforcement actions, irrespective of whether consent from workers involved has been obtained. The HD has appointed its Central Monitoring Team to oversee action taken by estate staff on suspected employment-related irregularities and ensure follow-up actions are taken within two months' time.

The HD has critically examined and strengthened its performance assessment mechanism of the PSAs and contractors, which includes deduction of marks from their respective performance scores for every issue of Default Notice to PSAs. The HD also proposes to deduct marks from the non-financial scores during the tender evaluation of service contracts for every demerit point received by tenderers. The HD will submit the proposed arrangements to the Tender Committee of the Housing Authority (HA) for approval before implementation.

To tackle the hawker control problem, the HA is committed to making every endeavour to maintain a hawker-free environment in all its PRH estates. Concerning the effectiveness of PSAs in tackling the hawker problem, as PSAs are not empowered to take enforcement actions against illegal hawking activities in outsourced PRH estates, the HD has strengthened the workforce of its Mobile Operations Unit to assist PSAs in hawker control and will take over the responsibilities of hawker control from PSAs in case of need. The HD will continue carrying out joint operations with the police and other relevant government departments to combat illegal hawking activities in the black spots of hawkers in PRH estates according to the modality plan of Team Clean. As an ongoing measure, HD staff conducts on site surprise checks for monitoring purposes.

The HD has also taken proactive measures to compile a master list of the number of hawkers in various PRH estates for drawing up effective operational

plans to combat hawkers. PSAs have to report to the HD on the head count of hawkers through the existing Estate Return System, which will further be enhanced for establishing a central record of illegal hawking activities.

On request of the HD, the Efficiency Unit has conducted a study on the outsourcing work of the HD, which was completed in end April 2008. The Administration will keep outsourcing of PRH management under regular review in a constructive and forward-looking manner.

As shown in the various measures taken and reported in the Minute, the Government takes the PAC's recommendations very seriously. We will continue to fully co-operate with the PAC, monitor the progress on the implementation of the recommendations, and make regular reports to the Legislative Council.

Finally, I would like to thank the PAC for its comments and recommendations. These comments and recommendations are very useful in ensuring value for money in the delivery of public services. The Government is pleased to accept these criticisms and comments. As always, we stand ready to respond promptly. Thank you.

## **ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. First question.

### **Enactment of Competition Law**

1. **MR FRED LI** (in Cantonese): *The Government is now consulting the public again on the enactment of a competition law. In this connection, will the Government inform this Council:*

- (a) *as the public discussion document issued in November 2006 recommended that seven types of anti-competitive conduct be covered in the competition law, yet the latest consultation paper only covers four of them, leaving out "joint boycotts", "unfair or discriminatory standards" and "abuse of a dominant market position*

*(such as predatory pricing)", of its rationale for doing so,; whether it has assessed if this approach runs contrary to the consensus in the community of widely supporting a competition law in Hong Kong;*

- (b) while the Government proposes that fines up to \$10 million may be imposed by the Competition Commission, the Secretary for Commerce and Economic Development indicated some days ago that depending on different cases, the level of fines could be increased to 10% of total turnover during the period when the infringement occurred, whether it can elucidate further the meaning of "depending on different cases"; whether it has assessed if such a practice will lead to grey areas in the competition law and hence resulting in enforcement difficulties; and*
- (c) as the Government has proposed that the competition law will not apply to the Government or statutory bodies, whether it has assessed if the approach which does not regulate government conduct giving rise to a monopolistic and anti-competitive situation will render utility undertakers providing water, electricity, gas and postal services as well as their activities being also excluded from the application of the competition law will be undermined as a result; whether it will make reference to the practice of foreign countries and study how granting such exclusion on an across-the-board basis can be avoided?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Madam President,

- (a) The seven types of conduct referred to in the consultation document issued in 2006 are only some examples of anti-competitive conduct. Anti-competitive conduct is not limited to four types or seven types. Since the form of anti-competitive conduct changes with time and circumstances, it is not possible to list all types of anti-competitive conduct in the law. In this regard, we propose in the consultation paper to provide in the law for a general prohibition against all conduct that has the purpose or effect of substantially lessening

competition. This approach follows the practice adopted in most overseas competition jurisdictions, and also concurs with the feedback received on this issue in the 2006 consultation exercise.

I would like to point out here that no matter whether anti-competitive conduct falls within one of the seven categories of conduct highlighted in the consultation document issued in 2006, or the four types of conduct mentioned in the consultation paper issued in 2008 (that is, price-fixing, bid-rigging, output restriction and market allocation), it will still be regulated under the general prohibition. It is only when enforcing the general prohibition that we propose to follow the practice of most overseas regulatory authorities in presuming that price-fixing, bid-rigging, output restriction and market allocation are entered into with the express purpose of substantially lessening competition. It would be up to the future Competition Commission to decide how it would treat such conduct. However, in order to increase legal certainty, we propose that the Commission should issue guidelines clearly setting out the types of conduct that it would presume always to have the purpose of substantially lessening competition, and how it would treat such conduct.

I wish to emphasize that we have not discarded the three types of conduct (joint boycotts, unfair or discriminatory standards and abuse of a dominant market position) mentioned in the question. These would still be regulated under the general prohibition. For example, in the consultation paper, there is a special section on the prohibition on abuse of substantial market power, under Proposal 27. Detailed discussion on how to deal with this type of conduct is also included in this section.

- (b) We propose that the Commission could take the seriousness of each case into account when deciding the penalties. Fines of up to \$10 million could be imposed by the Commission. More severe penalties, including higher fines and disqualification from holding a directorship or a management role in any company for up to five years, could be imposed by the Competition Tribunal, on

application by the Commission. Our proposal that the maximum financial penalty be 10% of turnover during the period when the infringement took place is in line with international practice.

As is the case with judicial authorities, the Commission would exercise its judgment and take the seriousness of each case into account when considering the criteria for imposing penalties, so that there would be no question of grey areas arising. To increase transparency, the Commission would issue guidelines to explain the considerations to be used in calculating levels of fine.

- (c) This question concerns two issues. First, how the Government and statutory bodies should be treated under the law and second, treatment of public services provided by the private sector.

The results of the previous round of public consultation showed that the public is mainly concerned with anti-competitive conduct in the private sector. In the proposed legislation our key aim is to address the public's concerns in this area. Hong Kong's public sector is relatively small, and mainly provides essential public services on the grounds of public interest. Therefore we propose not to apply the law to government or statutory bodies. This should help to ensure that the Government and statutory bodies would not be subject to unfounded or misconceived complaints.

Further, statutory regulation may not be the best way of ensuring that the public sector adheres to the principles of competition. If a public sector body engages in anti-competitive conduct, the Government can take appropriate administrative measures under the existing competition policy to rectify the situation.

We will review this approach in the light of actual experience after the implementation of the law.

As regards the provision of major public services by private sector undertakings (for example, public transport, electricity, and so on), we have made reference to the approaches adopted in the European Union, the United Kingdom and Singapore, and propose that such

activity should be excluded from the application of the law in so far as the prohibition would obstruct the performance of the undertaking's obligation to provide the public service in question. It should be noted that the law would only exclude the undertaking's activities that were essential to fulfilling its obligation to provide an essential public service. As regards the Commission's handling of cases where it might allow for a specific activity to be excluded, the undertaking concerned should submit the reasons why it considers an activity should be excluded, for the Commission to decide in the light of the actual facts.

**MR FRED LI** (in Cantonese): *Madam President, there are currently two Ordinances, namely, the Broadcasting Ordinance and Telecommunications Ordinance, which have clearly provided for anti-competitive conduct. I have made reference to sections 7K and 7L of the Telecommunications Ordinance which clearly prohibit licencees at an advantageous market position from abusing their position. This is precisely one of the seven types of anti-competitive conduct mentioned in the first round of consultation. However, such conduct has been left out in the current consultation. As a result, "abuse of a dominant market position" is not included in the four types of conduct. At present, the only legislation containing such a provision has been formulated by the Government. May I ask the Secretary why such a provision has been left out in the second round of consultation, giving us an impression that it is unimportant? Does the Secretary consider there is a contradiction in this?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): As I mentioned in the main reply, the original seven types of conduct had been reduced to four. Mr LI insists on the inclusion of all seven types of conduct rather than only four. I have in fact explained this in my main reply. But we will readily accept good advice. After listening to your views, your voices will certainly be heard and improvement will be made if we consider that there is room for improvement in the legislation.

**MR CHAN KAM-LAM** (in Cantonese): *We very much agree that certain public sector bodies should be exempted from the legislation or certain public facilities*

*should be provided by the Government and exempted from the competition law. But I would like to know the Secretary's ..... because recently many so-called social enterprises will be given government support. When a competition law is enacted in the future, will such a practice be criticized on the grounds that the Government has provided facilitation or policy preference, thus leading to unfair competition in this aspect in the community? Is it necessary to lay down more explicit provisions in this area?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): In our current proposal, government and statutory bodies are not subject to the competition law. If the problem raised by Mr CHAN Kam-lam just now will really involve anti-competitive conduct, the Government may also rectify the situation by taking administrative measures, as I said in the main reply. But I would like to emphasize one point again. As the consultation is still ongoing, we absolutely welcome whatever views presented to us. If Members consider that the relevant provisions should be drafted more clearly in the future, we will certainly welcome such a suggestion.

**MR RONNY TONG** (in Cantonese): *President, in my opinion, it is a good thing for the Government to simplify some anti-competitive conduct in this consultation paper. Despite the merits of simplification, it seems that there is little mention of acquisition and merger in the current consultation paper although these two types of anti-competitive conduct have been raised in the previous one. May I ask the Secretary whether the Government is not going to consider acquisition and merger for the moment, or it will still consider them and we can still put forward our views?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): If Mr Ronny TONG cares to review our consultation paper again, he will note that we have put forward three proposals regarding acquisition and merger. We have also made it very clear in the consultation paper that we have no predetermined position and we are prepared to listen to Members' views in

the light of the pros and cons of these three proposals. We therefore absolutely welcome any views.

I thank Mr TONG for his commendation on this paper.

**MR RONNY TONG** (in Cantonese): *President, if the Government is going to acquire some public services, will the Government be exempted?*

**PRESIDENT** (in Cantonese): Mr TONG, please wait for another turn to ask another supplementary question because this is not part of your previous supplementary question.

**MR RONNY TONG** (in Cantonese): *But this is also related to merger, President.*

**PRESIDENT** (in Cantonese): If I allow your question, I have to treat all Members equally. In that case, our meeting cannot proceed any further. Please press the button to wait for another turn.

**MISS TAM HEUNG-MAN** (in Cantonese): *In the second round of consultation, a number of changes have been made after taking account of the dissenting views of the business sector in the first round of consultation. Does the Government's approach illustrate that its policies continue to be tilted in favour of the business sector? Has the Government considered striking a balance between the interest of the business sector and the interest of consumers through offering protection to consumers by the competition law?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): The re-introduction of the consultation paper this time and the demonstration of the Government's determination to enact the legislation are precisely due to the Government's desire to protect consumer interest. Over the past few decades, the prosperity of Hong Kong has hinged on competition.

Take the liberalization of the telecommunications market as an example. I believe all Hong Kong people have benefited from the opening up of the market since 1995. So, in this consultation paper, instead of drafting the relevant provisions in legal terms, we have drafted it in a very detailed manner in order to facilitate further discussions. Apart from that, we have also taken account of the views collected in the previous consultation before drafting the relevant provisions.

I would like to tell Miss TAM that our first and foremost legislative intent is to bring forth more progress and protection for consumer interest through competition instead of favouring any sector.

**PRESIDENT** (in Cantonese): Miss TAM Heung-man, has your supplementary question not been answered?

**MISS TAM HEUNG-MAN** (in Cantonese): *President, just now I asked the Secretary how to strike a balance between the interest of the business sector and the interest of the ordinary citizens. The Secretary has not answered this point.*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Yes, Madam President.

Miss TAM Heung-man has put it most correctly. When enacting the legislation, we have to bear in mind the consumer interest and ensure that the business environment of Hong Kong — not the business sector, sorry — ensure that the business environment of Hong Kong is not adversely affected. However, while competition brings forth progress, we have to protect consumer interest. We consider that a balance between these two has been struck in the paper. That said, we will certainly welcome Members' views.

**MR JAMES TO** (in Cantonese): *President, I would like to follow up Mr Fred LI's supplementary question just now. I have read the Secretary's main reply*

*carefully, in which four types of conduct are presumed anti-competitive and will lessen competition regardless of the number of acts of such conduct. However, it is most unfortunate that under the Telecommunications Ordinance, our existing legislation, it is stipulated that conduct such as "abuse of a dominant market position" is regarded as anti-competitive and this is not just a presumption. So, if we enact such an anti-competition law in the future and even "abuse of a dominant market position" — at least such conduct — is not included as a presumption, is this not rather absurd? Are our laws laden with inconsistencies?*

*Besides, why can we not presume that these three types of conduct are anti-competitive? It seems that the Government has not given us any justifications so far.*

**PRESIDENT** (in Cantonese): Mr James TO, according to my understanding, you are asking the Government why these three types of conduct, one of which has been cited as an example by you, are not presumed anti-competitive in the consultation paper on competition, right? Secretary, please answer the question.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): As I have given an explanation in my main reply, the practice is the same in other jurisdictions with regard to the four types of conduct and we have only followed their practice. But I would like to reiterate that it is only a consultation paper. If Mr TO has any constructive ideas enabling us to make improvement, I will welcome him presenting them.

**MR JAMES TO** (in Cantonese): *President, the Secretary has not answered why the three types of conduct cannot be presumed anti-competitive or monopolistic?*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): I have nothing to add.

**MR RONNY TONG** (in Cantonese): *President, my follow-up question just now is: If the Government is going to acquire a certain public utility such as bus service in view of the frequent fare hikes, will such acquisition also be exempted under the current proposal on exempting government bodies?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Madam President, I certainly cannot answer a hypothetical question because a number of factors have to be taken into account when deciding whether or not certain conduct is anti-competitive. So, the Commission will issue a host of guidelines in the future. After receiving a complaint, the Commission will have to scrutinize the circumstances surrounding it and conduct a lot of investigations before the nature of the case can be confirmed. Today, I cannot answer Mr TONG's supplementary question, but our spirit is that the Government should also comply with the principle of fair competition and cannot override any commercial entities. Although this is the spirit, I have also explained why government and statutory bodies are exempted in this proposal. However, it is also stated in the consultation paper that such a practice will be reviewed in the future.

**MR RONNY TONG** (in Cantonese): *The Secretary does not understand my supplementary question. If the law does not apply, a situation where the Commission will consider whether or not certain conduct is anti-competitive will not arise. If the law applies, the case concerned will be referred to the Commission for deciding whether or not certain conduct is anti-competitive. I have to ask this supplementary question because the Government proposes now that government or statutory bodies will be exempted so that the whole piece of legislation will not be applicable to them. If the Government desires to acquire a public service such as bus service because of exorbitant fare hikes, will the law not be applicable to the Government? If not applicable, no investigation will be conducted and no decision will be made. If the law is applicable, however, the relevant authorities will decide whether or not the acquisition has violated the principle of fair competition. This is the focus of my supplementary question.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Let me reiterate that, firstly, I will not answer a hypothetical question; secondly, as Mr TONG is also aware, the SAR Government has all

along upheld the principle of "big market, small government". I cannot say whether the hypothetical situation he mentioned will or will not happen. If it has happened, I am sure that there will be lots of disputes in society and it will give rise to another focused discussion.

**PRESIDENT** (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

**MR JAMES TO** (in Cantonese): *President, I still want to ask the Secretary a question: Why are joint boycotts, unfair or discriminatory standards and abuse of a dominant market position not presumed anti-competitive? I first of all asked the Secretary of the reason and the Secretary replied that they had followed the practice of other jurisdictions. As a matter of fact, has he merely followed the practice of other jurisdictions without understanding the justifications? Why is the Secretary unable to tell us even the rationale behind the practice of other jurisdictions?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): As I explained in the main reply, the other four types of conduct, that is, price-fixing, bid-rigging, output restriction and market allocation are considered serious conduct in international practice while the other three are considered less serious. But Mr TO seems to insist that these three types of conduct should be added. As I said just now, this is a consultation paper and if Mr James TO can put forward strong justifications supporting the inclusion of these three types of conduct, particularly the conduct he just mentioned, under serious conduct, we are absolutely willing to listen to his views. If we think that the justifications raised by Mr James TO or Mr Fred LI are cogent, we are absolutely willing to consider them.

**MR JAMES TO** (in Cantonese): *The Secretary has not answered my question. This is a consultation paper by the Government for the purpose of explaining why it did not think that these three types of conduct should be presumed anti-competitive when the paper was being drafted. And the Secretary, in his*

*reply just now, said that it was the practice of other jurisdictions. Despite my repeated questions, the Secretary is unable to explain why these three types of conduct are not presumed anti-competitive and included in the consultation paper. Is our Secretary so poor?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): In my opinion, Honourable Members are very poor. Why? Because they have not read the reply. I have explained .....

**MR JAMES TO** (in Cantonese): *President, it is a consultation paper.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): I have explained why and I have given an explanation. If Members have different views, they can raise them and explain why the practice in Hong Kong should be different from that of other jurisdictions. In the light of Mr TO's criticism that the Secretary is very poor, I have to say that he is even poorer if he really holds such an opinion.

**MR JAMES TO** (in Cantonese): *President, I object. Since this is the Government's consultation paper, the Government should be responsible for explaining why these types of conduct are not included in the paper, right? The Secretary should not say that the public can convey their views to the Government if they have any. The public will certainly express their views, right? This is the Government's consultation paper. President, I object to the Secretary's remarks.*

**PRESIDENT** (in Cantonese): I will not allow a debate to unfold on the issue. Second question.

**Liberalization Measures Under CEPA Relating to Film Industry**

2. **MR RONNY TONG** (in Cantonese): *President, the Mainland and Hong Kong signed the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) in 2003. Liberalization measures under CEPA I to III have come into effect respectively since January 1 of 2004, 2005 and 2006. Regarding the liberalization measures applicable to the film industry, will the Government inform this Council:*

- (a) *whether it knows the respective numbers of relevant applications in respect of the following six measures since their implementation: under CEPA I:*

*Chinese language motion pictures produced in Hong Kong are allowed to be imported for distribution on the Mainland on a quota-free basis after vetting and approval; motion pictures jointly produced by Hong Kong and the Mainland are allowed to be treated as mainland motion pictures for the purpose of distribution on the Mainland; under CEPA II: Hong Kong service suppliers are allowed to establish wholly-owned companies on the Mainland on a pilot basis; these companies are allowed to engage in the distribution of Mainland-produced motion pictures; under CEPA III: the Cantonese version of motion pictures co-produced by Hong Kong and the Mainland are allowed to be distributed and screened respectively in Guangdong Province after obtaining approval;*

- (b) *among the aforesaid cases, the respective numbers of approved cases with and without amendments, rejected cases and the reasons concerned, as well as those under consideration; and*
- (c) *of the measures the Government currently has to help film service suppliers of Hong Kong tackle various administrative barriers on the Mainland and fully make use of the advantages provided by the liberalization measures under CEPA, so as to enable more Hong Kong-invested motion pictures to be distributed and screened on the Mainland?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, the Government of the Hong Kong Special Administrative Region (HKSAR) has been supporting the local film industry in developing new markets including the huge mainland film market. The film industry is, in fact, one of the sectors that have benefited most from CEPA since it came into effect in 2004. Before responding to the question raised by the Honourable Ronny TONG, I would like to brief Members on two general points concerning the promotion of the Hong Kong films in the mainland market.

First, the HKSAR Government does not have the figures regarding the number of applications filed to the mainland authorities by the local film industry for co-production approval and/or mainland distribution as requested in parts (a) and (b) of the question. While it has been our established policy to assist the film industry in exploring the mainland market and to maintain close ties with the industry to understand its needs, we do not add unnecessary administrative burdens to industry players and require them to report to the HKSAR Government details of their commercial activities in the Mainland, including applications for approval or distribution. It is also an industry norm for production companies to form a partnership to produce a film project. Such partnerships are therefore formed on a project-by-project basis and will dissolve once the film project is completed and distributed. As such, we cannot trace back the detailed record regarding the vetting, approval and distribution of films produced by Hong Kong (Hong Kong productions) and co-produced by Hong Kong and the Mainland (Hong Kong-Mainland co-productions) in the Mainland during the past four years. That said, I will provide some relevant figures for Members' reference shortly.

Second, Hong Kong productions to be distributed outside Hong Kong must follow the approving and relevant administrative mechanisms of those jurisdictions. When promoting Hong Kong films in the mainland market, the HKSAR Government and the industry have from time to time suggested to the mainland authorities streamlining approval and administrative procedures to facilitate market access and commercial operation. It is however clear that we shall not and could not seek unreasonable changes to specifically accommodate to our own need.

Set out below is my reply to Mr TONG's question.

- (a) Since the implementation of CEPA I, in Guangdong Province where most Hong Kong productions and Hong Kong-Mainland co-productions are screened, a total of 30 films were screened in 2004, 31 in 2005, 29 in 2006 and 40 in 2007. These represent a substantial increase as compared with the figures prior to the implementation of CEPA in 2004. In addition, seven Hong Kong-Mainland co-productions hit the Mainland Top 10 Box Office chart for mainland films in 2004 and 2005, and nine hit the same chart in 2006 and 2007. From 2004 to 2007, Hong Kong-Mainland co-productions won 166 awards in various overseas and local film festivals. Within four years of time, achievement of the Hong Kong-Mainland co-productions has been outstanding, both in terms of box office and reputation.

In the three years following the implementation of CEPA II, a total of seven Hong Kong companies have received permission to operate film screening business and six companies to distribute mainland motion pictures in the Mainland.

In the two years following the implementation of CEPA III, information from cinemas in Guangdong Province shows that among the Hong Kong productions and Hong Kong-Mainland co-productions approved for screening, over 90% were distributed in Putonghua and Cantonese at the same time.

- (b) CEPA offers various forms of preferential treatment to the Hong Kong film industry in accessing the mainland market. Hong Kong productions and Hong Kong-Mainland co-productions to be screened in the Mainland are still required to comply with the Regulation on Film Administration of the Mainland as well as censorship guidelines promulgated by the State Administration of Radio, Film and Television. For example, according to the prevailing guidelines, films with excessively horrifying scenes, highly irritating plots of murder, violence, drug abuse or gambling, or contents involving evil spirits and devils or advocating evil cults

and superstition may not be approved. In addition, Hong Kong-Mainland co-productions should comply with the relevant conditions set out under CEPA. For instance, at least one third of the leading casts must be from the Mainland. As I have explained earlier, statistics on applications and approvals for films in the Mainland are not available.

- (c) The HKSAR Government has been assisting the local film industry in opening up the mainland market by various means. Since CEPA came into effect in 2004, the local film industry has not only benefited from the arrangements on the import and distribution of Hong Kong productions and Hong Kong-Mainland co-productions, but has also been allowed to provide, in the form of joint venture, sound and video recording product distribution services in the Mainland, and to operate film screening business on a wholly-owned basis by renovating or constructing cinema theatres. These measures have not only brought business opportunities to the Hong Kong film industry, but also facilitated the promotion of Hong Kong productions and Hong Kong-Mainland co-productions in the Mainland. The HKSAR Government will continue to help the local film industry seek further access to the mainland market under CEPA.

**MR RONNY TONG** (in Cantonese): *President, I am very disappointed at the Secretary's reply because he has not answered any part of my question apart from providing information which is already available on the Internet. President, I will let other colleagues ask follow-up questions.*

*My main question mainly requests the Secretary to point out what measures the Government currently has to help the Hong Kong film industry tackle various administrative barriers on the Mainland. President, we do not request the Government to seek changes in the mechanism of the Mainland so as to accommodate our need. We do not ask the Government to do that. We just hope that the Government can understand that after the screening of the film "Lust, Caution", for instance, the Hong Kong film industry has encountered more difficulties in the approval procedures of the Mainland. Many applications have even been rejected and the approval procedures as a whole*

*have almost come to a standstill. Has the Government looked into the difficulties encountered by the Hong Kong film industry on the Mainland? What measures does the Government have to tackle the difficulties after it has realized what they are?*

*President, please take a look at part (c) of the main reply. Frankly speaking, it has really not answered my question at all.*

**PRESIDENT** (in Cantonese): Mr TONG, it seems that you have asked a number of questions in this supplementary question. But it does not matter. Since there are no other Members waiting for their turns to ask supplementary questions, I will ask the Secretary to answer your questions jointly.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, I am very disappointed because no Members are waiting to ask supplementary questions.

President, our reply is in fact very substantial. Even though Mr Ronny TONG holds that my main reply is hollow, he should know that I have answered many of his questions. Nevertheless, I will still answer his question about the difficulties which may be encountered by the Hong Kong film industry, especially after the screening of a particular film he mentioned just now. I am sure that he mainly wants to seek a reply to this question.

In fact, the Hong Kong Film Development Council (FDC) and colleagues in the Government have maintained close ties with the relevant organizations in the Mainland. The first ministry and commission which I visited after I had assumed office in last August were the relevant ministry and commission in order to learn about how to strengthen our communication with the Mainland and remove obstacles. After that, we will be able to remove the barriers at the first instance in case the industry encounters any problems. On this matter, I can make it clear to Mr TONG that the Government is always concerned about the interest of the industry. Furthermore, we have also conveyed to the relevant

mainland departments problems which they have encountered and reflected to us. The FDC has in fact liaised with the relevant departments in the Mainland at the first instance.

I am glad to tell Mr TONG that the message he raised just now about numerous barriers imposed on the film industry may have become outdated. According to my understanding, films which have recently been submitted for vetting can be approved within a normal timeframe. So, the problem he raised just now may have occurred one month or even a longer period ago. In other words, delays in the approval procedures did happen in the past few months but the problem has been resolved now.

**MR RONNY TONG** (in Cantonese): *President, it has taken us some time from submitting our questions to drawing lots for determining the priority of our questions. Although what the Secretary has mentioned in his reply can be elaborated in the main reply, he has not done so.*

*What we wish to know is also what the industry very much wishes to know, that is, the degree of concern on the part of the Government and the concrete measures taken by the Government. However, the communication mentioned by the Secretary just now seems to have taken in the form of a casual chat over a tea-break and no substantial administrative measure has been adopted to help the industry so that films will be granted approval for distribution more easily. Can the Secretary elaborate what substantial measures have been put in place, apart from communication in the form of chatting and dining with the relevant parties? Or, are there no measures at all?*

**PRESIDENT** (in Cantonese): Mr Ronny TONG and Secretary Frederick MA will be happy to hear that some Members are waiting to ask supplementary questions. But I will handle Mr Ronny TONG's follow-up question first. In my opinion, this question can be regarded as part of his previous supplementary question because he is seeking more specific information from the Secretary concerning what the Government has done to remove the barriers.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, as I said in my main reply, the Government has helped the industry remove many barriers. Otherwise, the Hong Kong film industry would not have been able to gain access to the mainland market since 2004 as I said in my main reply. In respect of figures, particularly concerning theatres, they can operate theatres on a wholly-owned basis. At present, some theatres in the Mainland are run by the film industry of Hong Kong on a wholly-owned basis. These are the Government's efforts made for the industry.

Regarding vetting and approval, as I said in the main reply, this is the decision of the mainland authorities which have prescribed their own standards. We absolutely should not and could not request that our standards be followed. We can only communicate with them, but not in the form of chatting and dining as Mr TONG said. We have lots of communication methods and channels through which we can explain to them what problems our film industry has encountered. Through the Government's explanation, our problems will be understood more clearly.

So, we have to respect their system of vetting and approval. But we will also explain our difficulties to the relevant mainland authorities on behalf of the industry. This is the so-called communication, which is not carried out in the form of chatting or dining as Mr TONG said.

**MS MARGARET NG** (in Cantonese): *President, I think the Secretary need not be so disappointed because we can ask more sensible follow-up questions if he can provide clearer answers to Members' questions.*

*President, the thrust of the Secretary's reply just now is that improvements would not have been impossible if the Government has not done its job. I have no doubt about it. I just want to know what problems have been encountered by Hong Kong productions or Hong Kong-Mainland co-productions. How these problems can be solved in this process? In other words, what lessons have we learnt, what message have we got and how can such difficulties be averted in future? President, I hope that the focus of the question is put on the contents and substantial matters instead of the ultimate result.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Ms NG, the relevant mainland organizations have in fact provided very detailed guidelines on what are covered by the vetting and approval procedure to the Hong Kong film industry. These include excessive violence, and so on, as I said in my reply, of which the industry is well informed.

Of course, there is subjectivity in the vetting and approval procedure, which is, however, conducted according to the guidelines. If major problems arise in the vetting and approval of some films, they will take the initiative to explain them to the organization concerned. The ministry and commission concerned will also explain why approval is not granted. They have their own communication channels. However, since the problems that occurred after the screening of a particular film, as mentioned by Mr TONG just now, have affected the industry as a whole, the Government has to strengthen communication, seek information from the relevant department in order to gain a better understanding of the situation, and play the important bridging and communication role. The guidelines issued to the industry are in fact very clear and there are no grey areas or problems.

President, I do not know whether I have answered Ms NG's question.

**MS MARGARET NG** (in Cantonese): *President, he has not answered my question.*

*If the guidelines are so clear, what are the problems encountered by the industry? Is it because of the different standards on the definition of violence or the others between the two sides? Does the Bureau only perform the role of seeking clarification and asking for more guidelines from the mainland authorities or something else? President, I would like to know all these facts.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): The guidelines are very clear although there may be subjectivity on some occasions. But I am sure that this is inevitable in any system.

As we are not in charge of these matters, I am not in position to explain it on behalf of the relevant mainland organizations. Nevertheless, I have to

reiterate that the SAR Government is prepared to assume a bridging role should there be any communication problem between the mainland authorities and the industry.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. Last supplementary question.

**MR CHAN KAM-LAM** (in Cantonese): *President, CEPA is very important to the film industry. Over the past few years, it is also because of CEPA that the Hong Kong film industry has managed to enter the mainland market.*

*President, as I do not belong to the film industry, I have no idea what barriers are referred to in the question. Do these barriers refer to the differences in the vetting and approval procedures in Hong Kong and the Mainland? In the past, some film production associations, such as the federation of the film industry, could engage in direct dialogue with the Government. Thus, no company would be at a loss as to what to do when problems arose. May I ask whether the Government will help the industry communicate with the mainland authorities through their own organizations or bodies?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Mr CHAN, the Government has certainly done its job in this aspect because we have established the FDC which has also engaged players of the film industry. Regarding communication, Mr CHAN can be assured that there is absolutely no problem and this is the role we play.

Regarding the vetting and approval systems of the Mainland and Hong Kong, they are certainly different from each other because two different cultures are operating under "one country, two systems". It is therefore not surprising at all. Let me cite an example. In Hong Kong, we have implemented a film

classification system which is not available on the Mainland for the time being. This explains why there are differences in respect of vetting or other procedures.

**PRESIDENT** (in Cantonese): Third question.

### **Air Quality in Guangdong and Hong Kong**

3. **MISS CHOY SO-YUK** (in Cantonese): *President, it has been reported that the air quality in Guangdong and Hong Kong and the roadside air quality in Hong Kong have both shown signs of deterioration. In the Pearl River Delta Regional Air Quality Monitoring Network — A Report of Monitoring Results in 2007 published last month, the Government pointed out that the average number of air pollution exceedance days recorded in Guangdong and Hong Kong last year was nearly 34% of the total number of days in the year, representing an increase of 2.19% compared with that of the year before. It has also been reported that although the Hong Kong Government had spent almost \$700 million of public money in the past five years to improve roadside air quality, roadside air pollution in Hong Kong in the first quarter of this year was the worst among the records since 2000 when they were first kept, with the number of exceedance hours exceeding 10% of the total number of hours, and the number of exceedance hours in Central even reached 310, which was the worst in the past nine years. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints relating to the air quality and roadside air quality in Hong Kong received by the Government in the past three years;*
- (b) *besides meteorological factors, whether the Government will assess what other factors contribute to the deterioration of the air quality in Guangdong and Hong Kong and the roadside air quality in Hong Kong; if it will, of the details; if not, the reasons for that; and*
- (c) *apart from the measures mentioned in the paper provided for the meeting of this Council's Panel on Environmental Affairs on*

*28 January this year, what other countermeasures focusing on the above state of deterioration of the two kinds of air quality the authorities have put in place?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): I would like to thank Miss CHOY So-yuk for her question. Before answering the specific questions, I would like to first elaborate on the state of our air in recent years.

Apart from local and regional air pollutant emissions, meteorological factors can also affect air quality. The long-term trend of air quality mainly depends on the changes in the emission levels of air pollutants. Meteorological factors play a part in short-term fluctuations in air quality, though they have little impact on the long-term trend.

As weather conditions can fluctuate between years, the air quality in a specific month can deviate from that of previous years. Therefore, it is inappropriate to select air quality data in a short period, such as a specific month or a couple of months, and compare the data with those of the same period in previous years to assess whether air quality has improved or deteriorated.

The best way to assess air quality changes as well as the effectiveness of air pollution control measures is to examine the long-term trends of major air pollutants, that is, the annual average pollutant concentrations over the past years.

According to data from the Environmental Protection Department (EPD), the annual average concentrations of major air pollutants measured at the general and roadside air quality monitoring stations did not vary much in the past three years, that is, from 2005 to 2007, and showed improvement as compared with 2004. Members may notice the change in the past four to five years from Annex 1. As compared with 1999, the annual average concentrations of air pollutants measured at roadside air quality monitoring stations have improved as a result of the implementation of a wide range of vehicle emission control measures — Members may recall that these measures were mainly implemented in phases since 1999 — as shown in the table in Annex 2. However, as I have mentioned at the relevant committees, the overall air quality is still at a critical level, and further improvement is required.

Let me come back to the specific questions.

- (a) Complaints received by the EPD normally involve specific emission sources or subjects, follow-up enforcement action will be carried out in response to the complaints and the relevant information will be recorded. The department received a total of 12 343, 13 264 and 14 304 complaints relating to specific air pollution sources in 2005, 2006 and 2007 respectively. Nearly 50% of the complaints about air pollution in the past three years were related to vehicle emissions, while the rest mainly involved specific pollution sources, such as cooking fumes from restaurants, dust from construction sites and foul smell.
- (b) Hong Kong and the Pearl River Delta (PRD) Region have seen rapid economic growth in recent years. The gross domestic product of Hong Kong has increased by 30% while that of Guangdong doubled over the past five years. Such buoyant economic activities have resulted in additional demand for electricity, transportation and industrial activities. The air pollutants emitted from power generation, transportation and industries in Hong Kong and the neighbouring PRD, which are the primary sources affecting the air quality in Guangdong and Hong Kong, have thus increased. The changes in the emissions from these sources are the basic factors contributing to the improvement or deterioration of air quality in the two places. Improving air quality requires concerted efforts by the governments, enterprises and the community in the two places. Given the commitment of both governments and the collaboration mechanism in place, the emission reduction measures implemented in Guangdong and Hong Kong should improve the air quality of both places in the long run. I believe that the results will eventually be reflected in the long-term trend of the air monitoring data from the PRD Regional Air Quality Monitoring Network.

As short-term air quality is easily affected by meteorological factors, normally we need data spanning a period of about five years to make objective and scientific assessment of the changes in air quality for establishing the trend. As the monitoring data measured by the PRD Regional Air Quality Monitoring Network only cover a period of two years, we consider the relevant figures are not sufficient for trend analysis and assessment of the effectiveness of

the emission reduction measures for the time being, but these figures can definitely be used as reference.

That said, we will endeavour to monitor and assess air quality in the two places. Both the Guangdong and Hong Kong Governments will continue to gather more data through the monitoring network over the next few years. The data, together with the estimated pollutant emission levels, will be used to assess the air quality trends and the effectiveness of the emission reduction measures of the two places. The Mid-term Review of the PRD Regional Air Quality Management Plan (Mid-term Review) completed earlier this year has laid the groundwork for collecting relevant information for the monitoring of the effectiveness of the measures.

To improve roadside air quality, the Government has implemented a wide range of measures since 1999 to reduce vehicle emissions. These measures include providing grant for owners to replace diesel taxis and light buses with liquefied petroleum gas models, introducing ultra low sulphur diesel (ULSD), implementing the most stringent emission and fuel standards for vehicles, tightening control on smoky vehicles, requiring pre-Euro diesel vehicles to be retrofitted with particulate removal devices, offering grant for the replacement of pre-Euro and Euro I diesel vehicles with Euro IV models.

These measures have borne results. Since the introduction of ULSD, roadside sulphur dioxide level between 1999 and 2007 has dropped by 22%, and is now broadly comparable to that recorded at general monitoring stations. Moreover, the above measures have brought down the levels of respirable suspended particulates and nitrogen oxides at roadside by 15% and 24% respectively. The number of smoky vehicles spotted has also decreased by 80%.

Notwithstanding, the high vehicle flow and limited roads in Hong Kong, the large number of old vehicles and the built-up environment in the urban area that impedes the dispersal of air pollutants in the territory, render the above measures insufficient for achieving desirable roadside air quality levels. We will continue to

collaborate with the public and the transport trade to come up with more effective measures for further improvement of roadside air quality.

- (c) In the paper submitted to the Panel on Environmental Affairs of the Legislative Council on 28 January this year, we listed in detail a series of emission reduction measures to be launched in Guangdong and Hong Kong in the coming years.

To improve regional air quality, the Guangdong Provincial Government, apart from implementing existing emission reduction measures, will also introduce the enhancement measures recommended in the report of the Mid-term Review. These measures include requiring newly built power plants to install denitrification systems, tightening local emission standards for industrial and commercial boilers, enhancing cleaner production requirement for volatile organic compound (VOC)-containing products, setting limits on the VOC contents of consumer products, and tightening control on emissions from vessels.

For Hong Kong, apart from the series of measures outlined in the report of the Mid-term Review, I have to thank Members for their support and their approval of funding which allow us to launch a Cleaner Production Partnership Programme in April this year to help and encourage Hong Kong-owned enterprises operating in the PRD Region to adopt cleaner production technologies and practices. The Programme is now open for application.

With regard to improving roadside air quality, the Government will continue to expand the railway network to reduce reliance on road transport. A number of new and major railway projects have been firmed up for implementation.

Moreover, the Government has offered since 1 April 2008 First Registration Tax concession to vehicle owners who purchase new environmentally-friendly commercial vehicles that meet approved standard (that is, the Euro V emission standard). Public consultation on the proposal to require drivers to switch off vehicle

engines while waiting was completed in end-March 2008. The feedback is being analysed for drawing up a regulatory framework with broad-based support.

Moreover, the EPD commenced in June 2007 a study to comprehensively review the Hong Kong Air Quality Objectives (AQOs) with reference to guidelines and standards of the World Health Organization as well as those being adopted by places such as the European Union and the United States. The study will also look into the long-term air quality management strategy for achieving the new AQOs, covering the necessary control measures and technologies, interface with transport and planning policies, implementation framework and timetable, and so on. We wish the multi-pronged approach adopted will alleviate the problem.

Annex 1

Annual Average Concentrations of Air Pollutants from 2004-2007  
(in mg per cu m)

		<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>
Respirable suspended particulates	General stations	60	55	54	55
	Roadside stations	83	78	79	77
Nitrogen dioxide	General stations	58	52	52	53
	Roadside stations	99	97	96	95
Nitrogen oxides	General stations	106	103	102	99
	Roadside stations	342	375	364	342
Sulphur dioxide	General stations	25	22	22	21
	Roadside stations	22	21	19	21
Ozone #	General stations	43	35	36	37

# At roadside, ozone concentration is very low and therefore not measured.

## Annex 2

**Changes in the Annual Average Concentrations of  
Air Pollutants Measured at Roadside Monitoring Stations  
from 1999 to 2007**

<i>Air Pollutants</i>	<i><sup>1</sup>Annual average concentration of air pollutant at roadside stations (micrograms per cubic metre)</i>		
	<i>1999</i>	<i>2007</i>	<i>% Reduction</i>
Respirable Suspended Particulates	91	77	15%
Nitrogen Oxides	452	342	24%
Sulphur Dioxide	27	21	22%
Nitrogen Dioxide <sup>2</sup>	99	95	4%

- 1 As the present Mongkok Roadside Monitoring Station was built and commenced operation in 2001, when comparing the change in the roadside air pollutant concentrations from 1999 to 2007, only data from the Central and Causeway Bay Roadside Monitoring Stations are used.
- 2 Apart from a small amount emitted directly from vehicles, nitrogen dioxide in the ambient air is mainly formed by nitrogen oxides reacting with pollutants formed by photochemical reactions such as ozone.

**MISS CHOY SO-YUK** (in Cantonese): *President, this main reply is very much similar to the one provided by the former Secretary a few years ago. I remember that the former Secretary had repeatedly assured us in this Chamber that there would surely be substantial improvement in air quality by the year 2007. It is now 2008 and the Secretary admits that air quality is at a critical level — I am grateful that he admits so — for this in other words proves that the assurance given at the time no longer holds.*

*President, we will stage the Equestrian Events of the Olympic Games in August this year. Beijing has already adopted many short-term measures to alleviate air pollution. May I ask the Secretary whether we will follow the approach of Beijing to adopt some short-term measures to prevent any air pollution problem that may tarnish the international image of Hong Kong from arising during the period? As air pollution will become more serious during the period in particular, will measures like odd-even vehicle ban be adopted? The*

*Secretary also admits in the main reply that roadside air pollution is mainly caused by vehicle emissions.*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): I agree with Miss CHOY So-yuk that the air pollution problem in Hong Kong is still at a critical stage and that continuous efforts have to be made. I have thus listed a number of measures in my main reply. Some of these measures are the continuation of certain ongoing work while others are new measures adopted since the announcement of last year's policy address, including the regional cleaner production requirement mentioned by me earlier.

Miss CHOY So-yuk has mentioned the air quality monitoring and improvement work required during the staging of the equestrian events of the Olympic Games in Hong Kong. Usually, during the summer months in Hong Kong, I think the air quality is better than that in winter, unless in times of typhoon when the dispersal of air pollutants is impeded because of the low pressure. Actually, we have conducted negotiations with the power companies, and we hope that they will lower the proportion of coal consumption while increasing natural gas consumption during the above period. In the case of Hong Kong, pollutants in the air, say sulphur dioxide, are mainly, 90%, emitted by power companies in Hong Kong. I thus hope that the proposed arrangement may lower the emission level of sulphur dioxide or other pollutants.

During the equestrian events of the Olympic Games, the organizer will also carry out other relevant green initiatives. Concerning air quality, we believe the situation cannot be changed completely by any single measure. However, regarding the measures mentioned by me earlier, we will continue monitoring and examining the situation and address the relevant issues.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk, has your supplementary question not been answered?

**MISS CHOY SO-YUK** (in Cantonese): *President, no, the Secretary has not answered whether measures like odd-even vehicle ban will be adopted.*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): Since the equestrian events will be staged in certain designated locations in Sha Tin and the North district, I believe the imposition of the odd-even vehicle ban may not necessarily be an effective improvement measure and may cause inconvenience on the contrary. Thus, we have not considered this measure.

**PRESIDENT** (in Cantonese): A total of eight Members are waiting for their turns to ask supplementary questions. Fourteen minutes have already been spent on the exchange between the Secretary and Miss CHOY So-yuk, and I noticed that the Secretary has also spent eight to nine minutes in giving his main reply. In view of this, I will exercise my discretion to allow a few more Members to ask supplementary questions.

**MR LEE WING-TAT** (in Cantonese): *On the problem of air pollution, mitigation measures do not necessarily have to be implemented merely during the Olympics. The Secretary should know that I have put forth a similar proposal in the past. At present, some people who have no urgency to drive their cars or other vehicles to Central, Wan Chai, Causeway Bay and Tsim Sha Tsui still drive into those districts, that means they have not made an effort to protect the environment. I have once proposed the imposition of odd-even vehicle ban during certain peak hours in certain busy districts. Why not? This measure does not have to be implemented throughout the day, for it is not called for during non-peak hours and at night. Why does the Government not consider implementing these measures during the peak hours in designated districts?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, concerning traffic arrangement, insofar as the overall usage of roads in Hong Kong is concerned, 90% is taken up by public transport and only about 10% is used by private vehicles. For this reason, when we consider the imposition of odd-even day or odd-even vehicle ban as an environmental protection measure, we must take into account the traffic management arrangement and the possible impact it may have on other aspects. On the issue of whether in-depth studies will be carried out on individual districts where the roadside air pollution index is high, such as matching traffic control measures of certain districts with

environmental protection requirement, I recall that I already mentioned this in my replies to previous questions and stated that we would consider work in this aspect in future.

**MR LAU WONG-FAT** (in Cantonese): *Madam President, since emission from power companies is one of the major sources of air pollutants, residents in the vicinity of power plants are surely the first to suffer, for they have to put up with the pollution long term. Will the Government inform this Council whether the authorities plan to conduct check-ups for residents living in the vicinity of power plants to assess the impact of exhaust gas emission on the health of residents?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I have to thank Mr LAU Wong-fat for his question.

First, I believe when the existing power plants were erected, environmental assessment work should have been conducted in some measure at the time with a view to minimizing the impact of emissions on the nearby residents. On the other hand, we notice that the public is becoming more concerned about the pollution in Hong Kong and their expectations are growing. Among the four existing major air pollutants, 90% of sulphur dioxide, which I mentioned earlier, is generated by power plants in Hong Kong. Therefore, when we signed the new Scheme of Control Agreement (SCA) with the two power companies at the end of last year, in addition to reducing their profit to lower electricity tariff, we did endeavour to regulate the emissions of the two power plants, particularly on the reduction of sulphur dioxide emission. In comparison with the gross emission cap for sulphur dioxide in 2006, which was 65 000 tons, the emission cap will be lowered to 25 000 tons by 2010. The reduction is very substantial.

Certain penalties have been included in the SCA to subject the two power companies to a fine when their emissions exceed the caps. We are now working on a bill related to the Air Pollution Control Ordinance, which proposes to include the emissions of the two power plants in emissions trading. The Bill is now pending the support of the Bills Committee. We hope that upon the

implementation of a series of measures, pollution now caused by power generation will be minimized progressively. It is hoped that the impact of power plants on the residents nearby will be reduced indirectly.

As to whether check-ups will be conducted direct, due to the enormous variation between individuals and individual districts, it is difficult to conduct this assessment from the environmental protection angle at present. However, in respect of emission reduction, we will continue to work hard on this, President.

**MR LAU WONG-FAT** (in Cantonese): *President, I mainly want to ask the Secretary whether there is any plan to conduct check-ups for residents of the districts concerned. Was there any planning to do so?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, as I said earlier, we do not have such a plan for the time being. We will on the other hand focus on the reduction of emission.

**DR YEUNG SUM** (in Cantonese): *Madam President, the Secretary mentioned the pollutant emissions of the two power companies earlier. We know that the Government now wishes to impose control on this, but I also know that the two power companies will certainly mount resistance to this. Will the Government drum up its resolve to step up the regulation in this respect? I refer to emission in particular.*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, the penalties included in the SCA and the emission caps set for the two power companies will be dealt with properly through the SCAs and the annual renewal of their licenses. Actually, we think that the relevant control can be reinforced in general. For this reason, the relevant bill has been submitted to the Legislative Council to seek power under the Air Pollution Control Ordinance in pursuing work on this front.

With regard to the response of the two power companies, it has so far been positive, and the two power companies will adopt emission reduction measures. I cannot say that there is resistance in this respect, but we wish that the Legislative Council will take this opportunity to give us more power to carry out the work I mentioned earlier, so that in addition to regulation, we may allow the power companies to carry out emissions trading in the region. I believe, with the collaborated efforts of various parties, we will yield twice the result with half the effort.

**MS AUDREY EU** (in Cantonese): *President, I think the reply of the Secretary is another play-on-figures tactic usually employed by the Government. In the main question, it is stated unequivocally that "roadside air pollution in Hong Kong in the first quarter of this year was the worst among the records since 2000 when they were first kept, with the number of exceedance hours exceeding 10% of the total number of hours". President, the relevant situation is mentioned in particular, that is, "the number of exceedance hours in Central even reached 310, which was the worst in the past nine years". However, the Secretary has made no reference to all this in his reply. He only said that the situation had improved as compared with 1999 and was similar to that in 2004. He has not addressed the crux of the problem at all. So, may I ask the Secretary whether he can tell us when we, frequent visitors to Central, can stop covering our noses with our hands when we cross the roads or walk in them?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, first, I would like to take this opportunity to reiterate that, according to the stance of the Government and the data collected, we all along consider that there is room for improvement in the air quality of Hong Kong, be it general air quality or roadside air quality. As I mentioned earlier, the situation is critical. However, when we process those figures, we can come up with some scientific data. Miss CHOY So-yuk's question is on the problem of the so-called trend. We now have two set of figures at hand, including the annual data obtained from the monitoring work we carried out in the past few years since 1999. As I said in the main reply, the overall situation at roadside has improved, but we still consider it far from satisfactory. Nevertheless, the situation may vary from one quarter to another.

Moreover, in the main question, Miss CHOY So-yuk mentioned the regional indices on our co-operation with Guangdong Province, which have only been available since 2006 and 2007. The two indices mentioned are related to the situation in the past two years, which other factors, like meteorological factors, are also involved. I have particularly made this clear in the main reply.

I believe Ms Audrey EU and I share the same opinion, that air quality in the urban areas or on the whole needs improvement. For this reason, I have taken the trouble to list certain existing and newly introduced initiatives in the main reply. We definitely have to continue to work hard on this.

**MS AUDREY EU** (in Cantonese): *President, the Secretary has not answered my supplementary question. I did not ask him whether improvement was needed or how he handled those two sets of data. I asked him when we could stop covering our noses when we cross the roads, President. Is he telling us that the situation cannot be improved and it will still be the case in future?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, if I can give an answer to Ms Audrey EU's supplementary question, I believe we will all be very happy. We must be practical and pragmatic. The description I gave just now is the overall situation and the changes taken place in the past few years. If air quality is improved, be that of the urban areas, Central or other districts, it will be beneficial to our health, the cityscape and our living on the whole. So, I am sorry that I cannot give a direct answer to Ms Audrey EU's question on the time we can stop covering our noses when we cross the roads. However, I believe the Government will aim at improving air quality and work together on the local or inter-regional front.

**PRESIDENT** (in Cantonese): We have spent more than 25 minutes on this question. Last supplementary question now.

**MR TAM YIU-CHUNG** (in Cantonese): *President, the Government has spent more than \$700 million to subsidize vehicle owners to switch to cleaner fuel or lower the pollutant emission of their vehicles. However, has the Government*

*assessed the effectiveness of the public money spent on reducing pollution caused by vehicles? Has it considered replacing certain vehicles badly falling short of the emission standard after a period of time?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I have to thank Mr TAM Yiu-chung for his supplementary question. I do not want to give a wrong impression to Members that we are satisfied with the present situation when we quote those figures. However, I did mention in the main reply that with the implementation of vehicle-oriented measures, those measures mentioned by Mr TAM Yiu-chung, since 1999, pollutants in roadside air had reduced when compared with that in 2007, and the reduction ranged from a dozen to twenty percentage points. When this is used as an indicator, the situation has changed in some measure. Moreover, as I mentioned in the main reply earlier, with the improvement in the diesel used, the concentration of sulphur dioxide in roadside air has dropped accordingly.

However, on the adequacy of these measures, there may still be room for further improvement. Under the policy address of the previous year, a sum of \$3.2 billion has been set aside for the replacement of these vehicles. Since the deadline for some vehicles has not yet expired, we hope that more vehicles will join the programme and change to better and cleaner engines. However, we are also aware of the different concerns of the trade, that changes cannot be made overnight. We will examine whether more stringent measures, such as stipulating the mandatory replacement of those vehicles, should be adopted. But since this may affect the livelihood of the members of the trade, we will only give further consideration to this pending the response to the replacement programme when the deadline expires.

**PRESIDENT** (in Cantonese): Fourth question.

### **Protection of Personal Data**

4. **MS AUDREY EU** (in Cantonese): *Recently, a number of government departments, statutory bodies and business corporations have lost equipment and*

*devices containing personal data. These incidents have been described by some media as a "privacy disaster". In this connection, will the Government inform this Council:*

- (a) of its remedial measures, apart from issuing circulars or guidelines relating to the internal procedure on information security; whether it knows the remedial actions taken by the statutory bodies and business corporations concerned, including whether they have notified the affected members of the public; if they have, of the details; if not, the reasons for that;*
- (b) of the channels through which members of the public may lodge complaints and claims when their personal data have been negligently handled by government departments, statutory bodies or business corporations; and*
- (c) in view of this "privacy disaster", whether it will consider amending the law to expand the power of the Privacy Commissioner for Personal Data (PC), as well as enacting laws on the management of government records to specify clearly the authority of and restrictions on government departments in handling personal data, so as to strengthen the protection of the privacy of the public; if it will amend the law, of the timetable; if not, the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President,

- (a) In the wake of the several data leakage incidents involving government departments, the Government has instantly issued an internal circular and guidelines on information security procedures for the compliance by government officers. To strengthen the control on the handling of personal data as well as protective measures on the use of portable electronic storage devices, all departments will make maximum use of the security functions offered by application software and use storage devices that support data protection such as passwords, encryption, biometrics (for example, fingerprints). Officers must seek prior permission from

supervisors and suitably encrypt the data before storing any information in portable storage devices. After usage, such data must be deleted as soon as possible. No officer may store personal data in a personally-owned device or personal computer.

The Government would strengthen communication with civil servants with a view to raising their awareness of the Security Regulations, and remind them of the need to comply with the Regulations. The Office of the Government Chief Information Officer, the Security Bureau and the Civil Service Bureau would work out the relevant plans, and have the plans implemented in the coming months by working with departmental Information Security Officers, Policy Bureaux and departments. The Government will strengthen monitoring on the use of portable electronic storage devices by bureaux and departments, as well as review the information security policies, the Security Regulations and code on working practice in the light of the investigation outcome of the recent leakage incidents.

Departments and the statutory body involved in data leakage have respectively taken corresponding remedial measures, including reviewing departmental information security procedures, issuing internal guidelines to strengthen staff awareness of information security and notifying the affected persons, the Office of the Privacy Commissioner for Personal Data (PCO) or the police. Details are set out in the Annex.

We understand that the bank involved in the data leakage incident issued a statement on 7 May indicating that it was contacting the affected account holders.

- (b) A member of public who suspects that his personal data have been negligently handled by government departments, statutory bodies or business corporations may lodge a complaint with the PCO. Where the PC upon completion of the investigation finds that the data user is contravening a requirement under the Personal Data (Privacy) Ordinance (PDPO), or has contravened such a requirement and such contravention is likely to continue or be repeated, the PC may serve an enforcement notice to direct the data

user to take necessary steps to remedy the contravention. Non-compliance with an enforcement notice is a criminal offence. On conviction, the data user is liable to a fine at Level 5 and imprisonment for two years, and in the case of a continuing offence, a daily fine of \$1,000.

An individual who suffers damage by reason of a contravention under the PDPO may claim damages under section 66 of the Ordinance.

- (c) Section 36 of the PDPO empowers the PC to inspect any personal data systems of a data user for the purpose of making recommendations to the data user in order to promote compliance with the provisions of the PDPO. The PC is also empowered under section 38 to the Ordinance to carry out an investigation to ascertain whether there is any contravention of the PDPO either on his initiative or upon receipt of a complaint. The PDPO also confers on the PC the power of entry on premises for the purpose of investigation and inspection as well as the power of gathering evidence. The PC may direct a data user to take necessary steps to remedy contravention of the Ordinance by serving an enforcement notice on the latter. Insofar as the recent data leakage incidents are concerned, the PC has invoked his statutory powers to follow up the cases through investigation, inspection, and so on. We consider the PDPO has conferred appropriate powers on the PC to follow up the data leakage incidents effectively.

We are conducting a comprehensive review of the PDPO together with the PC. During the review, we will examine ways to further strengthen protection on personal data privacy with regard to the collection, holding, processing and use of personal data.

The PDPO binds the government departments. Government departments are required to comply with the relevant provisions of the Ordinance in handling records containing personal data. We thus consider that there is no need to legislate on the management of government records.

*Hospital Authority (HA)*

Following the incidents of loss of patient data, the HA has issued circulars to remind its staff of the importance of protecting the privacy of patients and provided staff with detailed guidelines on the handling and protection of patient data. At the same time, the HA has enhanced its reporting system on loss of patient data and will strengthen the awareness of its staff on the need to protect patients' data through promotional video and training courses.

In addition, the HA has instantly started upgrading its patient information system so that any patient data (including name and identity card number) downloaded will be protected through encryption. As an interim measure and before the completion of the system upgrade, no portable electronic storage devices containing patient information may be taken away from the hospitals without prior approval from the Hospital Chief Executives or their delegates.

The HA has also set up a Task Force on Patient Data Security and Privacy to review HA's existing policies and security systems of protection of patient data with a view to recommending improvement measures. The Task Force will complete the review and submit a report to the HA Chief Executive in three months' time.

The HA is now in the process of informing the affected patients through interviews, telephone calls or letters.

*Department of Health (DH)*

Upon the loss of the portable electronic storage devices containing personal data, the DH has instantly emphasized to all staff of the importance of data protection and security, and reminded all service units of the need to comply with data protection regulations.

Except under special circumstances and with the permission of the supervisor of the service unit, no staff may store personal data concerning identifiable individuals in any removable storage medium, or transmit such data out of the DH by any means.

Staff members are required to minimize the storage and transmission of personal data even with permission and must ensure encryption of such data. Data stored in the medium must be deleted immediately after use.

The DH will pay close attention to any data protection or security guidelines issued by the Government or the PC, and take necessary actions to strictly comply with such guidelines.

The DH took the initiative to report to the PCPD about the data leakage incident. The DH has given written explanations and apologies to the affected children and their families. A hotline is in operation to handle related enquiries.

#### *Civil Service Bureau*

On discovery of the loss of a portable electronic storage device which contains the names and post titles of 25 serving civil servants, the Civil Service Bureau has reported the case to the police and the PCO. The storage device contained information on two disciplinary inquiries on alleged misconduct by two civil servants. However, no personal data about members of the public were involved. The Bureau has notified and extended apology to all civil servants involved.

After the incident, the Bureau has reviewed its information security measures and issued internal guidelines to remind its staff to comply with the related security regulations at all times. In particular, the guidelines remind staff to keep storage of personal data or classified information to an essential minimum and such data must be encrypted before storage. Such data should not be stored in personally owned devices (including portable electronic storage devices) or personal computers. Where there is an operational need to do so, only portable electronic storage devices with encryption features provided by the Government should be used for the storage, handling or transmission of such data. Except with special permission, no staff member is allowed to take classified information away from the office. In case there is a genuine need to do so, the staff will be provided with computers with encryption features, firewall and anti-virus software to handle classified information outside the office through the dedicated Virtual Private Network provided by the Government.

*Immigration Department (ImmD)*

On receipt of report concerning the data leakage incident, the ImmD has instantly taken corresponding measures to reduce its possible impact. Although the data were leaked through a personal computer at the home of the officer concerned, the ImmD took the initiative to immediately inspect all computer terminals of the ImmD to ensure that the software involved was not installed. At the same time, a home visit was immediately arranged to delete from the officer's computer all the data in question, remove from the computer the software in question and re-format the hard disk. The ImmD then made continuous attempts to search the data in question on the Internet for one week and the data in question could no longer be located.

Apart from directing all officers-in-charge of control points to immediately instruct their staff members verbally to observe relevant rules as stipulated in the PDPO and the Government Security Regulations on the day when the incident came into light, the ImmD subsequently re-circulated all relevant internal notices, reminding its staff members to strictly comply with all codes and regulations and to handle personal data and security information with caution. Furthermore, officers responsible for disciplinary matters in all sections have been instructed to request staff members to take all practicable steps to ensure the protection of personal data and to take appropriate disciplinary action against those who breach the rules. These officers were instructed to disseminate the aforesaid message to every staff member of the ImmD as soon as possible.

The ImmD has considered informing the affected persons. However, 11 of the 14 persons concerned are visitors whose correspondence addresses or telephone numbers are unknown. For the three Hong Kong residents, the leaked documents of two do not contain their personal data and hence their identity cannot be ascertained for further follow-up action. Although the remaining person can be identified, the ImmD is bound by the Registration of Persons (ROP) Ordinance from using the ROP data at will for other communication purposes not prescribed by the law (prescribed purposes under the law include application for registration, renewal and replacement of identity cards and so on). Should any concerned persons consider themselves being substantively affected by the incident, they may lodge a claim with the ImmD in writing.

**MS AUDREY EU** (in Cantonese): *President, I am very disappointed at the Secretary's main reply, particularly the last part, because he said they did not find it necessary to legislate on the management of government records. However, President, as you can see in the newspapers, data leakage incidents happened almost every day — or every other day — in government departments. It was reported in the newspapers that the PC had in fact made recommendations to the Government in December last year, proposing 50 amendments to the law. President, my office has also contacted the PC to request to the 50 legislative amendments, but the reply was negative. The PC explained that it is not in his capacity to let us read the amendments and it is also inappropriate to do so; and he thus has submitted the recommendations to the Secretary.*

*As reported by the media every day, the PC holds that the law does not confer on him sufficient powers and that more power should be given to him; but the Secretary, as he said in his reply, holds that the PC has sufficient powers and legislation is not necessary. However, having no opportunity to look at the recommendations concerned, we can hardly know what the status between the Government and the PC is. May I ask the Secretary, first of all, whether he can make public the 50 recommendations for our discussion; and, secondly, whether the Government will actively consider the request of the PC for introducing legislative amendments to enhance his powers?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, regarding Ms Audrey EU's supplementary question, I am of the view that, under the existing PDPO, the PC has sufficient powers to discharge his powers and functions conferred by the law. First of all, in the past decade or so, insofar as privacy protection is concerned, public education on the Hong Kong community has been enhanced through the establishment of the PCO and the enactment of the PDPO. Regarding the review paper submitted by the PC and his recommendations on various aspects submitted to our Bureau, we, as a Policy Bureau, have been discussing them with the PCO. Nevertheless, we must proceed with caution when reviewing and revising such an important ordinance because in the dozens of recommendations submitted, some of them involve very significant issues. As Members may be aware, the PC has raised the issue of whether the act of leaking personal data should be made an offence. If so, it is tantamount to criminalizing the act,

which is a fundamental issue. We have to consider it carefully to see if this will have an impact on the freedom of expression of individuals and the autonomy of different corporations in operation.

Secondly, it is proposed in the review that consideration should be given to whether or not the punishment should be enhanced. If so, this is also a relatively important issue which warrants discussion between the two parties.

Thirdly, I can briefly inform Members here of another issue raised in the review. That is, in future, when a person commits a crime which contravenes the PDPO and after investigation if a decision has to be made on whether prosecution is to be instituted, should the power of prosecution rest with the Department of Justice under the Basic Law or with the PC who can directly institute the prosecution?

By specially citing these three issues, I wish to let Members know that we, whether the Policy Bureau or the PCO, attach great importance to the review. But as it involves some relatively fundamental issues, we have to examine it carefully before making any proposal.

**MS AUDREY EU** (in Cantonese): *May I further ask, given that the PC submitted the recommendations to the Government in December — I am certainly not asking the Government not to examine them discreetly and thoroughly — and that this is such an important issue, should the Government make public the recommendations for discussion?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, I believe the public will certainly have the opportunity to discuss this issue. In dealing with this kind of major and important issue, the SAR Government will adopt a step-by-step approach and it will explain the annual legislative programme to the Legislative Council and implement it gradually. If we can come up with a set of mature recommendations after a joint review of the law by the PCO and our Policy Bureau, I believe we will certainly table it to the Legislative Council and give the public the opportunity to express their views. After public discussion and consultation, we will then proceed to implementation.

**PRESIDENT** (in Cantonese): There are eight Members waiting for their turns to ask supplementary questions. Will Members who have the opportunity to do so be as concise as possible so that more Members may ask supplementaries.

**MRS ANSON CHAN** (in Cantonese): *I am pleased to hear the Secretary say just now that he will consult the public. May I ask in what ways the public will be consulted; and whether the Government will announce its final decision? Moreover, how can the Government improve the entire system to ensure public confidence and support for the system?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, we will certainly table papers to the Legislative Council to report on the issue and to let the public have a comprehensive understanding of it. After a joint review by the PCO and our Policy Bureau, if both parties hold that certain areas of the PDPO warrant improvement and updating, we will do so to ensure the privacy of Hong Kong citizens is protected.

We attach great importance to public discussion because personal data and privacy protection concern the everyday life and work of the citizens. They are also a matter of concern to Hong Kong society.

**MRS SOPHIE LEUNG** (in Cantonese): *President, as mentioned in part (c) of the main reply, "section 36 of the PDPO empowers the PC to inspect any personal data systems of a data user for the purpose of making recommendations to the data user in order to promote compliance with the provisions of the PDPO." In view of the increased areas of data usage, particularly on the Internet and in the electronic media, whether the PC should be allowed to step up monitoring on the application of the PDPO in these areas? Should better guidelines be provided in a timely manner to specify how monitoring should be conducted? Should this be part of the responsibilities of the PC?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, the PDPO has in fact conferred powers on the PC in many aspects. The PC, by exercising his relevant powers, can inspect and

investigate data, be they in electronic form or hard copies, held by relevant institutions or government departments. Hence, the PC has been actively following up the recent incidents involving the banks or government departments. For instance, the PC has conducted a formal investigation on the case concerning the United Christian Hospital; and he has exercised his statutory powers to inspect the patient information system of the HA after its data leakage. As for the work of the DH and several other public and private bodies, he is also conducting compliance inspections and investigations at the moment. The PCO certainly will actively follow up all these efforts.

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG, has your supplementary question not been answered?

**MRS SOPHIE LEUNG** (in Cantonese): *No, President. I was asking whether such work should be done in advance. That is, as such incidents should be foreseen, efforts should be made in advance, rather than after they have happened. In view of the numerous ways of using data, should regulations be laid down beforehand?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, the PCO conducts inspections every year. They can initiate actions in this regard. Under the law, they can do so in the absence of complaints.

**MR SIN CHUNG-KAI** (in Cantonese): *President, the PC has followed up the work placed under his charge, but the Government has failed to follow up the work the PC wishes it to do, which is to amend the law. In the past year, the PC has requested the Government to amend the law on several occasions.*

*As a matter of fact, the relevant Ordinance was enacted around 1993 or 1994, but in the past 15 years, no review or amendment has been introduced. Many overseas countries, such as the United Kingdom, have amended their laws; and Australia and New Zealand have initiated the process of tabling the relevant ordinance to their Law Reform Commission for review. They did so in September and May 2007 respectively.*

*I have this supplementary question. The Ordinance has been enacted for 15 years. In the past, because of the technological development at the time, any contravention could be rectified after being penalized; but now, any contravention may lead to serious consequences because the data are online. The situation has changed. In view of this, does the Government consider it necessary to submit the Ordinance to the Law Reform Commission for review?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, the current status is, based on the experience accumulated in the past decade or so in implementing the PDPO and the liaison the PC has established with his counterparts overseas, we have sufficient experience and information to conduct the review in the light of the recommendations submitted by the PC. At this stage, we hold that it is more effective and practical to let the Bureau, the PC and his colleagues conduct the review. Apart from these two institutions, we welcome the participation of other professional bodies to express their views, if any, during public discussions and consultations. We believe we can achieve a desirable review through this brainstorming process.

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question now.

**MR LEE CHEUK-YAN** (in Cantonese): *We can see from the Annex that several government departments have given explanations on the incidents, including the HA, the DH, the Civil Service Bureau and the ImmD, but I cannot find any from the Social Welfare Department (SWD). I do not know whether the SWD ..... because it was reported that in the five years from 2002 to 2007, the personal particulars (including the identity card number) provided by visitors to the Integrated Family Service Centres (IFSCs) of the SWD were lost. The SWD, however, has not reported the case to the police, nor informed the PCO. The Government stated that according to the guideline, the affected persons should be notified. Has the Secretary followed up this case concerning the SWD? Moreover, are there other government departments which have similar incidents but have not reported them?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, regarding the incident of loss of staff fieldwork record and visitor information by the IFSCs of the SWD, the PC will conduct compliance inspection in the light of the incident and handle the matter in accordance with the statutory provisions and powers. Should similar incidents happen in other government departments, the department concerned will, depending on the actual situation, handle the case of loss or leakage of public data individually. Each and every department will proceed in a prudent and comprehensive manner and will seek to comply with the PDPO and the guideline issued by the PCO.

**MR LEE CHEUK-YAN** (in Cantonese): *President, the Secretary has not answered my supplementary question. As far as I know the SWD did not report the incident to the police, nor did it inform the PCO or the affected persons. May I ask the Secretary to confirm whether the SWD has informed the affected persons? According to the Secretary's reply, he clearly said that there is such a guideline.*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, in relation to this individual case, I believe I will liaise with the relevant Policy Bureau, and I also believe that the PCO will conduct a detailed follow-up on this case. This is the information I can furnish today.

**PRESIDENT** (in Cantonese): Fifth question.

### **Tendering Arrangements for Petrol Filling Station Sites**

5. **MRS SELINA CHOW** (in Cantonese): *President, since 2003, the Government has adopted new measures in respect of the tendering arrangements for petrol filling station (PFS) sites, which include putting up existing PFS sites for tender upon the expiry of their leases instead of having the tenancy renewed automatically, and putting up PFS sites for tender in batches, as well as allowing tenderers to submit a single bid for all the sites in a tender, with a view to*

*facilitating new market players in acquiring a commercially viable number of sites to achieve economy of scale. In this connection, will the Government inform this Council:*

- (a) in the past three years, of the respective numbers of PFS sites which had been put up for tender in the market or resumed by the authorities for alternative planning upon the expiry of their original leases;*
- (b) of the average time gap between expiry of the original lease and commencement of a new one in respect of the PFS sites put up for tender referred to in part (a); and*
- (c) whether the authorities have assessed the effectiveness of the above new tendering arrangements in enhancing competition in the local auto-fuel retail market?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I wish to thank Mrs Selina CHOW for raising this question.

The best way to enhance the competition in auto-fuel retail market is to facilitate the entry of new operators of PFS (that is, to promote market access). The Government has taken the following four measures to facilitate the new market entrants:

- (i) remove import licence and supply contract restrictions on bidders for PFS sites as it is a possible hurdle to entry;
- (ii) the current practice is to re-tender all existing PFS sites upon expiry of their leases, instead of renewing the leases to the existing operators, successful tenderers would operate their businesses on these PFS site;
- (iii) add a new land grant condition for new PFS or on re-tendering of existing PFS sites that the operator must set up price information boards so as to enhance price transparency, and hopefully competition among operators could be enhanced through this measure; and

- (iv) since June 2003, the Government has tendered the PFS sites in batches consisting of two to five sites per batch, depending on the land supply situation. The new tendering arrangement facilitates the new entrants in acquiring a critical mass of PFS to achieve economy of scale so as to have more effective competition in auto-fuel retail market.

In the last three financial years (that is, 2005-2006, 2006-2007 and 2007-2008), a total of 12 PFS sites have been put up for tender upon expiry of their leases. The average time gap between the expiry of the original lease and the commencement of a new one is about 10 weeks during which the tasks involved include analysing tender prices and arranging the payment of the remaining tender sum and the signing of the lease by the new operators.

Since the introduction of the new tendering arrangements in June 2003, two new operators have obtained 21 out of the 30 PFS sites put up for tender and successfully entered the market. The share of the first three biggest operators in terms of the number of PFS has dropped from the original 93% to the current 77%. These figures have demonstrated that the new tendering arrangements have effectively enhanced the competition in auto-fuel retail market.

The Government appointed a consultant in 2005 to study the local auto-fuel retail market including the impact of the new tendering arrangements for the PFS sites on the competition situation in the auto-fuel retail market in Hong Kong. The study report was published in 2006. It showed that there were clear signs that Hong Kong auto-fuel retail market was becoming more competitive. It also indicated that the new tendering arrangements that I have mentioned just now would facilitate the new operators in increasing their scale of operation when entering the market and enhance competition.

**MRS SELINA CHOW** (in Cantonese): *President, the Secretary said in his main reply that the average time gap between the expiry of the original lease and the commencement of a new one was about 10 weeks*

*President, we have all heard about the competition being achieved as mentioned by the Secretary, but I believe the Secretary will also agree that, in addition to commercial consideration, consumer service quality is also an important consideration. May I ask the Secretary, during the transition to the*

*new system, whether the authorities have considered taking any measure to achieve a seamless handover and to ensure no hiccups in the course ..... although there was an average time gap of 10 weeks, I can tell the Secretary, I have witnessed that some PFSs were closed down for four to five months, and motorists were unable to get any service. What methods does the Secretary have to achieve a seamless handover? Can it be improved to achieve seamless handover now?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, Mrs Selina CHOW referred to the handover period between the old and new leases. Certainly, the less time the better, and this will be most desirable. However, as far as I understand it from the relevant department, some of the time in between is indispensable. For example, the contractors are allowed to have 40-odd days to handle legal documents, to make the payments, as well as to make handover arrangements. In addition, some of the tasks should be handled by the old and new operators, such as safety tests, as well as cleaning up the pollution of old oil tanks, and so on. For that reason, normally all of these may require some time.

In addition, I have also noticed that, as Mrs Selina CHOW said, the handover time in some individual cases was longer than the 10 weeks as expected. In such cases, we will follow up individual cases and shorten the time as much as possible. We hope to minimize the impact on consumers.

**MR JEFFREY LAM** (in Cantonese): *President, just now the Secretary said that the average time gap between the old lease and the new one was about 10 weeks, and in some cases it would be longer. May I ask the Secretary, since the handover period is as long as 10 weeks, whether the authorities have assessed the rental loss to the public coffers due to the fact that these sites have been left vacant since the implementation of the new tendering arrangement in 2003?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I do not have the specific information at hand, but I believe the rental impact on the public coffers is rather insignificant, because after the new leases are signed, new operators are required to pay a deposit or tender price. Normally, they have to make such payments within the first 40 Days. Therefore, even if a new

operator is unable to fully take over the operation due to some other reasons, as far as the Government is concerned, the required deposit should have already been collected.

**MR JEFFREY LAM** (in Cantonese): *President, may I ask the Secretary to provide the information later?*

**PRESIDENT** (in Cantonese): *Secretary, will you give a reply in writing?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): Is Mr Jeffrey LAM asking about the loss in each case or the loss in general? I think Mr Jeffrey LAM's supplementary question can be divided into two parts, one is whether the Government has suffered losses, which I have answered just now. As to each individual case, I need to see whether there is more comprehensive information on the time generally required. Will this satisfy the requirements of Mr LAM?

**MR JEFFREY LAM** (in Cantonese): *As the sites left vacant for 10 weeks will certainly lead to losses, while the Secretary said .....*

**PRESIDENT** (in Cantonese): Secretary, what Mr Jeffery LAM has asked you to answer is that, without exceptions, all rental sites could charge rents and deposits. Just now you have only answered the part on deposits, but not the part on the rents. If you do not have such information now, please give a clear answer in writing.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): Yes. (Appendix I)

**MS MIRIAM LAU** (in Cantonese): *President, what the Secretary pointed out in the main reply was right. The best way to enhance competition in the auto-fuel retail market is to facilitate the entry of new operators of PFS.*

*However, it is learnt that at present, new operators of PFS are required to purchase fuel from existing or other long-standing oil companies, thus the prices are controlled and there is no real competition in the market. One of the reasons why new operators could not import fuel on their own is that it is very difficult for them to find another site in Hong Kong to construct new oil depots for fuel storage. Under such circumstances, may I ask the Secretary whether there is any plan to assist new operators to import fuel on their own, so as to facilitate genuine competition in the fuel market?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): I would like to thank Ms Miriam LAU for her supplementary question. With regard to competition, I have already mentioned in the main reply that we could see from the 2005 study report that in respect of competition and market entry, the measures cited by me just now would facilitate the entry of new operators, and hopefully other measures will also enhance the competition among market participants.

As to the overall fuel supply, as we all know, owing to Hong Kong's geographical location, we may not have new land for the construction of oil depots for different oil companies. I think that subject to the needs in future, we should look at the situation and then give consideration to this issue.

**PRESIDENT** (in Cantonese): Ms Miriam LAU, has your supplementary question not been answered?

**MS MIRIAM LAU** (in Cantonese): *President, I have asked the Secretary whether assistance would be given in respect of the oil depot issue. Will the Secretary give a clear answer to this point in my supplementary question?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I would like to know what kind of assistance Ms LAU has just referred to. I believe this is something we can study and discuss.

**MS MIRIAM LAU** (in Cantonese): *My supplementary question was very clear. That is, it is impossible or very difficult for Hong Kong to find a site for the construction of oil depots. Will the Secretary help operators identify sites for the construction of oil depots, so that new operators may import fuels on their own, and the market will have real competition?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I do not have such information for the time being, therefore I cannot give Ms LAU a satisfactory answer, but I can look into that.

**PRESIDENT** (in Cantonese): *Will you give Ms LAU a reply in writing?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): Yes, President. (Appendix II)

**MRS SOPHIE LEUNG** (in Cantonese): *President, I would also like to follow up 10-week gap. Even if we are to rent out a premises, we will minimize the time gap as much as we can. And referring to compliance checks, due diligence checks or others between old and new operators, I believe these tasks can be completed within the said time gap.*

*May I ask the Secretary, with regard to the period of 10 weeks — I am not saying several months, a gap of 10 weeks is just too wide — after this question, Secretary, will you instruct your colleagues to study how the gap of 10 weeks could be reduced to facilitate a seamless handover?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I would like to thank Mrs Sophie LEUNG for this supplementary question. I have also mentioned that it would be most desirable to shorten the time gap as much as possible when I answered the questions of other Members, but some of the tasks might take time to complete, including contracts, payment, the department's processing of successful tenders, as well as the checking of safety

equipment to be carried out at PFSs. However, I can undertake that we will look into ways to expedite the processing of this part in conjunction with colleagues from the Lands Department, as well as to see whether we can speed up the processing of some cases.

**MR FRED LI** (in Cantonese): *President, the Secretary mentioned in his main reply that a consultancy study report was published in 2006, and that there were clear signs that the auto-fuel retail market was becoming more competitive. Will the Secretary explain clearly to us, despite the market "becoming more competitive", why we often see that different oil companies are still effecting a price increase all within 24 hours? President, oil prices have not been substantially reduced, and all oil companies are making an increase. Fundamentally, there is very little difference in the retail price of fuels between retailers, and the pump price is the same regardless of the company. May I ask in what sense it could be said that the market was "becoming more competitive"?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, we are talking about several aspects of the issue of oil companies. First of all, as I said in my main reply, if we are to enhance competition, one of the ways is to facilitate the entry of more operators so that they can compete among themselves. I have also explained in the main reply that the measures taken in the past were supported by figures, for example, before this measure was implemented, the market share of the first three biggest operators was 93%, but after the measure was implemented, their market share was reduced to 77%. In the meantime, other measures are also moving in this direction. Therefore, I believe the consultant's conclusion is that the approach of facilitating market access and introducing new operators should be adopted to achieve this purpose.

As to whether there are collusive price fixing among the oil companies, this issue has always been our concern. Sometimes we may see the market price is more or less identical, but I am aware of the fact that different stations will offer different discounts, and different rebates are also offered in different locations. However, we also note that a question was asked earlier concerning a cross-sector fair competition law which is about to be introduced by the Government. If the competition law is enacted, I believe it may help to address

the problems mentioned just now, such as whether operators will abuse their market position to influence the competition.

**MRS SELINA CHOW** (in Cantonese): *President, in response to my question concerning the 10-week gap just now, the Secretary said that there were many issues to be dealt with during the handover period. We have also referred to the issue of seamless handover. However, the Secretary's reply indicated that in the private market, some of the procedures could be dealt with in advance.*

*May I ask the Secretary whether he will really go back and review the whole process and procedure, and examine whether it is possible to deal with those issues which could be dealt with in advance and then leave those tasks which must be and should be dealt with during the handover period to the handover period, in addition to stipulating in the contract that the operators must deal with them in the shortest possible time, such that a seamless handover can be achieved or the handover time minimized?*

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): Yes, I will.

**PRESIDENT** (in Cantonese): Last oral question.

### **Indiscriminate Sounding of Horns by Drivers**

6. **DR RAYMOND HO** (in Cantonese): *President, in reply to my question raised at the meeting of this Council on 23 May 2007, the former Secretary for the Environment, Transport and Works indicated that under regulation 3 of the Road Traffic (Traffic Control) Regulations (Cap. 374G), the Commissioner for Transport might erect on a road traffic sign to prohibit a driver from using a vehicle audible warning device within a restricted area, and that under regulation 59 of Cap. 374G, the police might prosecute any driver who failed to comply with the traffic signs. The Secretary had also undertaken to work in collaboration with the police to examine the possibility of enhancing the efficiency of law enforcement. Yet, the situation of noises created by drivers*

*indiscriminately sounding horns has so far not improved and, on the contrary, has shown signs of deterioration. In this connection, will the Government inform this Council:*

- (a) of the current number of districts in Hong Kong where traffic signs have been erected to prohibit drivers from sounding horns within restricted areas;*
- (b) given that at the meeting of the Council's Panel on Environmental Affairs on 28 April this year, the representative of the Environmental Protection Department (EPD) pointed out that all districts in Hong Kong were subject to regulation 43 of the above Regulations and, therefore, drivers must not sound horns indiscriminately or they would be prosecuted, whether the authorities will issue guidelines to police officers on duty to enhance law enforcement in all districts, including "silent zones"; and*
- (c) what publicity and educational work focusing on indiscriminate sounding of horns by drivers was undertaken by the authorities last year?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, regulation 3 of Cap. 374G provides that no person shall use any audible warning device on a vehicle on a road except to warn any person on or near a road of danger. We have been undertaking publicity and educational work targeted at drivers' undesirable behaviour of sounding horns indiscriminately. In parallel, the police will take appropriate action in accordance with different circumstances.

My reply to the three parts of the question is as follows:

- (a) Under regulation 3 of Cap. 374G, the Commissioner for Transport may erect a traffic sign on a road to prohibit a driver from using a horn within a restricted zone. Currently, restricted zones prohibiting the sounding of vehicle horns have been designated in 11 road sections in Hong Kong, four of which are on Hong Kong Island, two in Kowloon and five in the New Territories.

- (b) The police's efforts to enhance road safety cover many areas, including publicity, education, warning, issuing fixed penalty tickets and summonses, as well as making arrests in serious cases. In order to deploy resources effectively, the police focus enforcement actions on offences that have a direct bearing on road safety and smooth traffic flow. The police's priority is on those offences which may endanger vehicles and lives, such as speeding, failure to comply with traffic signals, careless lane changing and drink driving. Police officers on routine patrol will keep an eye on the improper sounding of vehicle horns and, depending on the circumstances, take appropriate actions such as issuing verbal warning and instituting prosecution.
- (c) We have all along attached importance to improving the driving behaviour of drivers. Hence, we have, in partnership with the Road Safety Council, launched various publicity and educational activities for road users, including a road safety campaign with the theme "Smart Driving with Courtesy" to help drivers improve their driving behaviour by, for example, staying alert and giving way to others, and to enhance their awareness of road safety. We have also compiled and uploaded onto the Transport Department's website a Road Users' Code (the Code). Apart from setting out the provisions and restrictions on the use of vehicle horns under the current legislation, the Code also explains the guidelines and restrictions on the use of horns while the vehicles are on the move and when stopping. Meanwhile, we will, through publicity and education work, traffic safety seminars and regular meetings with various transport sectors, continue to emphasize the messages of driving with courtesy and road safety to drivers, and remind them not to sound horns indiscriminately.

**DR RAYMOND HO** (in Cantonese): *President, I do not know if the Secretary understands that since regulation 43 of Cap. 374G prohibits motorists from sounding horns indiscriminately in places all over the territory, why restricted zones prohibiting the sounding of vehicle horns have been designated only in 11 road sections in Hong Kong? Is this because they are too few in number that the Government might as well not to designate any restricted zone? In addition,*

*in the course of taking law-enforcement actions, the police may issue fixed penalty tickets and make arrests in serious cases. May I ask the Secretary whether he has the relevant law-enforcement statistics for the past three years?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, from January to April 2008, there were in which two cases summonses had been issued or arrest made, and 11 in which fixed penalty tickets were issued. In the year 2007, there were three cases in which summonses had been issued or arrest made, and 50 in which fixed penalty tickets were issued. In 2006, there were seven cases in which summonses had been issued or arrest made, and 40 in which fixed penalty tickets were issued.

**MR FREDERICK FUNG** (in Cantonese): *President, according to the Secretary, restricted zones prohibiting the sounding of vehicle horns are designated only in 11 road sections in Hong Kong. I think these traffic signs are erected certainly due to very special circumstances or for specific needs, otherwise why are they so few in number? There must be some specific reasons. However, I am a bit worried after reading part (b) of the main reply. The reason for their being so few in numbers is perhaps the Government does not wish to do it, as the Secretary said the "police's priority was on those offences which may endanger vehicles and lives", and he cited several examples irrelevant to the sounding of horns. Does this mean that the instruction will make police officers focus more on certain tasks and less on some other tasks, which has led to the small number as mentioned by the Secretary?*

*Another reason for the small number of traffic signs was perhaps the difficulties in adducing evidence. For example, a car might have sounded its horn just once, and the police might not necessarily know which car had sounded the horn or which motorist had sounded the horn, so it would be difficult to adduce evidence in this case.*

*May I ask how the Secretary will address these difficulties, so that the authorities may act according to law and make enforcement possible?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, the first part of the supplementary question was about why there were

so few restricted zones in Hong Kong, only 11 in total. In fact, Cap. 374G provides that no driver on any road — that is, not just in some districts, but on any road — should sound the horn inappropriately. This is already a kind of yardstick. We have criteria for the establishment of these restricted zones, including whether we really need to maintain the tranquility of these zones all the time. Therefore, we can see that these 11 zones are mainly located in the proximity of hospitals and nature reserves. We also know that the sounding of horn serves a function, because it is related to personal safety. If a driver meets a dangerous situation, of course, he has the responsibility to sound the horn, which is necessary.

In addition, Mr Frederick FUNG asked whether there were enforcement difficulties, and he also referred to the priorities of enforcement. Of course, if we consider a certain law-enforcement action very important, certainly it will be easier to take law-enforcement actions when a dedicated team of police officers is assigned to do the job. However, this does not seem to be a task which requires the priority use of resources. Therefore, I have pointed out in part (b) of the main reply that our priority was on those offences which may endanger vehicles and lives, but it does not mean that police officers on patrol never pay attention to these issues.

Moreover, some conscientious members of the public will make a complaint or act as witnesses, and we have come across some such cases. Of course, it is another issue if the vehicles concerned left after sounding the horn. In some of the more serious cases, in fact, there were instances where members of the public came forward to give evidence, which facilitated our successful enforcement actions.

**DR RAYMOND HO** (in Cantonese): *President, I wonder if the Secretary is aware of the fact that in the commercial districts such as in the section on Queen's Road near the Central Government Offices, very often, when motorists in front of the traffic light react a little slower, about one-tenth of a second or so; or when an elderly on a wheelchair or a person with disabilities is just a bit slower when boarding or alighting a vehicle, then more than one vehicle behind, possibly more than a dozen of cars, will sound their horns, and they will sound the horns for more than a few seconds, sometimes perhaps a few minutes. Tourists who saw that would shake their heads, and the general public would*

*also consider that a nuisance. Will the Secretary consider that this issue needs to be addressed seriously, and at the same time it should also be considered from the perspective of making the best use of resources?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, we will indeed seriously address this issue. We will make an appeal through the publicity campaign entitled "Smart Driving with Courtesy". Of course, I will also ask my colleagues to pay special attention to some traffic black spots. Nevertheless, very often, the sounding of horn is not only a matter of courtesy, perhaps it is also a matter relating to the traffic arrangements. Some colleagues have told me that they have noticed that motorists tend to sound their horns in some road sections habitually; perhaps they are at a certain corner when congestion is ahead. Subsequently, after a yellow box junction had been added, the situation was significantly improved. In many cases, traffic arrangement may help to deal with the problem. Moreover, we have also noted that many people would commit jaywalking as they have put on headphones to listen to MP3 or to use their telephones, which was also a reason for motorists sounding their horns. Therefore, it is also the target of our recent publicity campaign, for it is related to personal safety and road safety. This seems to be one of the causes of the problem, and we are also aiming at this in the course of expanding our publicity in this regard.

**MR ALBERT CHENG** (in Cantonese): *President, according to the Secretary's reply, does it mean that the Secretary encourages motorists to sound their horns when they encounter congestions at road bends or when pedestrians pay no attention to road conditions in crossing the road? In fact, this is also unlawful.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, I have explained at the outset in the main reply that under regulation 43 of Cap. 374G, no person should sound their horns indiscriminately on a road. Of course, unless he can give a reasonable excuse, for example, he intends to warn any person of his own safety, all motorists are subject to regulation 43 of Cap. 374G.

**MR ALBERT CHENG** (in Cantonese): *The Secretary has not answered my question. I asked her whether or not she encourages motorists to sound their horns when they encounter congestions at road bends?*

**PRESIDENT** (in Cantonese): Do you have anything to add?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, if motorists sound their horns only because they are blocked at road bends, of course I do not encourage them to sound their horns, because that will fall into the ambit of regulation 43 of Cap. 374G and violate Cap. 374G.

**PRESIDENT** (in Cantonese): Oral questions end here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Review of Sentences of Prisoners and Rehabilitation Services for Discharged Prisoners**

7. **MR TAM YIU-CHUNG** (in Chinese): *President, a number of prisoners serving long-term sentences have relayed to me that despite their determination to rehabilitate themselves, they have great difficulty in meeting the existing criteria for applying for the review of long-term sentences, making it difficult for their sentences to be remitted. Moreover, they have indicated that the rehabilitative services of the Correctional Services Department (CSD) fail to effectively assist discharged prisoners in integrating into society. In this connection, will the Government inform this Council:*

- (a) *of the following in the past three years:*
  - (i) *the total number of prisoners whose sentences had been reviewed by the Long-term Prison Sentences Review Board (LPSRB);*
  - (ii) *the number of cases in which LPSRB suggested that the indeterminate sentences be commuted to determinate ones; and*

- (iii) the respective numbers of prisoners ordered by LPSRB to be released conditionally and put under supervision after release;*
- (b) whether it will review the existing criteria for applying for sentence review; if it will, of the details; if not, the reasons for that; and*
- (c) whether it will further enhance the existing rehabilitative services to assist prisoners in acquiring work skills and integrating into society; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR SECURITY (in Chinese):** President,

- (a) Statistics on the cases reviewed by the Long-term Prison Sentences Review Board (LTPSRB) in the past three years are as follows:
  - (i) A total of 1 469 cases were reviewed;
  - (ii) Of the cases reviewed, 350 were cases of indeterminate sentences, amongst which the LTPSRB recommended the substitution by determinate sentences in 19 cases;
  - (iii) The respective numbers of prisoners ordered by the LTPSRB to be released conditionally and put under supervision after release were two and 20 respectively.
- (b) The LTPSRB is an independent statutory body established pursuant to the Long-term Prison Sentences Review Ordinance (Cap. 524) (the Ordinance). Its principal function is to review indeterminate and long-term prison sentences, and to make recommendations to the Chief Executive on sentence remission for appropriate cases. Section 11 of the Ordinance provides that the Commissioner of Correctional Services must refer long-term and indeterminate sentences of prisoners to the LTPSRB for regular review according to the specified schedules. The prisoners concerned are not required to lodge an application themselves.

The sentence of every prisoner is handed down by the Court. In general, prisoners serving long-term or indeterminate sentences are those who have committed serious crimes. The LTPSRB will review each case referred to it with due care and consider all relevant factors, including the nature of the offence, length of time served, whether the prisoner has been completely rehabilitated, and public safety, and so on. Only when there are sufficient justifications after a thorough consideration of all relevant factors will the LTPSRB recommend to the Chief Executive that an indeterminate sentence be substituted by a determinate one, or that a prisoner's determinate sentence be remitted.

- (c) The CSD is committed to assisting prisoners in their rehabilitation. The Department will from time to time review and strengthen its existing rehabilitation services to enhance prisoners' employability and help them reintegrate back into the society smoothly after release. At present, apart from the opportunity to improve vocational skills through daily work in prison workshops, eligible prisoners may also apply for full-time pre-release vocational training courses run by the CSD for local prisoners. These include courses for male prisoners offered by the Lai Sun Correctional Institution Vocational Training Centre since June 2006, and courses for female prisoners offered by the Lai Chi Kok Correctional Institution starting since February 2008. Prisoners may also apply for short training courses provided at various adult institutions. Upon completion of the courses, prisoners will be arranged to sit for related public examinations for assessing their level of learning and attaining recognized professional qualifications. Such courses could help prisoners to find jobs as soon as possible after release and facilitate their re-integration into the society.

Starting from 2008-2009, the CSD will step up its co-operation with the Employees Retraining Board by arranging for the Board's short-term vocational training courses to operate at various institutions for adult prisoners. This serves to provide more opportunities for prisoners to receive vocational training while serving their sentences.

**Subventions for Residential Child Care Service Providers**

8. **MRS ANSON CHAN:** *President, there have been comments that the recent seasonal outbreaks of influenza, enterovirus, respiratory and other infectious diseases are placing enormous pressure on the staff and other resources of subvented non-governmental organizations (NGOs) which operate residential child care centres and children's homes. In this connection, will the Government inform this Council:*

- (a) when the Social Welfare Department (SWD) last conducted a systematic review of the adequacy of the capital and recurrent subsidies provided to the above NGOs to meet staff costs and other operating expenses; and*
- (b) whether it has assessed if the staffing and operating standards for NGOs, which are currently recognized for subvention purposes, are adequate to protect the health and welfare of children under the care of such organizations; if it has, of the outcome of the assessment?*

**SECRETARY FOR LABOUR AND WELFARE:** President, the SWD closely monitors service needs, and considers the staffing and operating standards currently recognized for subvention purposes in NGOs operating residential child care centres and children's homes adequate for the purpose of protecting the health and welfare of service users. Regular contact is maintained with these service providers to understand their operational needs and resource requirements. The SWD reviews the level of financial provision from time to time to ensure effective delivery of service.

**Bankruptcy and Winding-up of Airlines**

9. **MR HOWARD YOUNG** (in Chinese): *President, it has been reported that owing to high oil prices and keen competition in the aviation industry, a number of overseas airlines announced earlier that there were risks of ceasing business due to operating difficulties. Such airlines were allowed to continue operation under bankruptcy protection orders to minimize the impact of immediately ceasing business. However, an airline in Hong Kong recently*

*announced its immediate winding-up and cessation of business, affecting more than 30 000 passengers, some travel agents were also affected, and hundreds of million dollars were involved. In this connection, will the Government inform this Council:*

- (a) whether it will consider making reference to overseas practices and introduce bankruptcy protection to prevent the recurrence of cases in which airlines with operating difficulties wind up and cease business immediately, which will have serious impact on the passengers, travel agents, and employees concerned, as well as tarnish the reputation of Hong Kong's aviation industry; and*
- (b) given that under the existing winding-up arrangements, which are applicable to airlines, passengers and travel agents, not being preferential creditors, may ultimately not be awarded any compensation if an airline is unable to pay its debts with all its assets, whether the Government has made reference to the arrangements of the Travel Industry Compensation Fund and considered setting up a fund to protect passengers and travel agents against losses due to closing down of airlines; if such consideration has been made, when the relevant plan will be implemented; if not, of the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, after consulting the Financial Services and the Treasury Bureau and the Commerce and Economic Development Bureau, we would like to reply as follows:

- (a) Airlines are regulated by companies legislation in Hong Kong in the same manner as other companies. There is already a mechanism under the companies legislation in Hong Kong which provides for companies in financial difficulties to continue their businesses while repaying their debts. Under section 166 of the Companies Ordinance (Cap. 32), a company in financial difficulties may enter into a scheme of arrangement with its members or creditors including its employees for repayment of its debts. A scheme of arrangement agreed by the majority representing three-fourths in value of debt of the creditors or value of shares of the members

shall, if sanctioned by the Court, be binding on all the creditors or members. The company may then continue its business and repay its debts in accordance with the scheme of arrangement approved by the Court. The scheme of arrangement procedure may be invoked even after a winding up order has been made in respect of the company. If the scheme of arrangement is approved by the requisite majority of creditors or members and sanctioned by the Court, the winding up proceedings will be stayed and the company may continue with its business and repay its debts in accordance with the scheme of arrangement.

In case where the assets of the company in financial difficulties are in jeopardy, section 193 of the Companies Ordinance provides for the Court, on application either by a creditor or the company itself, to appoint a provisional liquidator for the purpose of protecting and preserving the company's assets. If it is considered to be in the best interest of the creditors of the company, the Court may empower the provisional liquidator to enter into discussions and negotiations for the purpose of restructuring the company's business and indebtedness or for the sale of the business of the company to interested investors.

As part of the Phase II of the Companies Ordinance rewrite exercise which will formally commence next year, the Financial Services and the Treasury Bureau will also review the above and other winding-up related provisions in the Companies Ordinance.

- (b) The Government at present has no plans to set up a compensation fund specifically for compensating travellers and travel agents in the event of the closure of an airline. At present, airlines in the market are vastly different in scale and internationally there is no precedent for reference when it comes to the setting up of this type of compensation funds. Significant implementation difficulties are envisaged. Moreover, the levy of any compensation fund would often be borne by consumers and is very likely to lead to increases in airfares. We would thus need to consider this carefully with a view to balancing the development of the industry and the need to protect the interests of consumers and travel agents.

**Foster Care Service**

10. **MR ALBERT HO** (in Chinese): *President, will the Government inform this Council of:*

- (a) *the number of children placed in foster families and the number of foster families newly registered in each of the past three years;*
- (b) *the number of cases in which foster families ceased to provide foster care service in the past three years, the respective numbers of such cases in which the provision of the service was ceased at the request of the families concerned and the Social Welfare Department (SWD), and the number of such cases involving criminal offences or requiring follow-up actions by the police; and*
- (c) *the current average unit cost of the foster care service, the average amounts of allowance and incentive payment currently received monthly by foster parents, and whether SWD had adjusted the amounts of such allowance and incentive payment in the past three years; if so, of the details; if not, the reasons for that?*

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

- (a) According to the statistics of the SWD, the number of children placed in foster families and the number of foster families newly registered in each of the past three financial years from 2005-2006 to 2007-2008 are as follows :

<i>Financial year</i>	<i>No. of children placed in foster families</i>	<i>No. of newly registered foster families</i>
2005-2006	802	118
2006-2007	870	113
2007-2008	890	80

- (b) From 2005-2006 to 2007-2008, a total of 295 foster homes were de-registered from the foster care service. The number included both foster homes providing service immediately before de-registration and those which were not, but no breakdown was

available. Of the 295 homes mentioned above, 290 de-registered of their own accord, one at the request of the SWD due to unsatisfactory performance, and four at the request of the SWD due to suspected criminal act.

- (c) According to the 2007-2008 revised estimate, the average cost for providing foster care service to a child is \$8,609 per month, including the expenditures incurred by the SWD and the foster care service agencies in providing administrative support and following up the placement arrangement. Foster homes receive a foster care allowance of \$4,411 per foster child per month, which covers the child's maintenance and incentive for the foster family. There is an additional one-off setting up grant of \$1,451 for each child newly placed in a foster home for the procurement of necessities. The allowances are adjusted annually for inflation.

### **Recurrent Subsidies for Direct Subsidy Schools**

11. **MR CHEUNG MAN-KWONG** (in Chinese): *President, regarding the Government's provision of recurrent subsidies to direct subsidy schools (DSSs), will the Government inform this Council:*

- (a) *as the Government determines the amount of recurrent subsidy for a DSS on the basis of the "average unit cost" of an aided school place, of the respective expenditure items of aided primary and secondary schools which have been excluded from the calculation of the average unit cost; and whether the Government has, in the calculation of the average unit cost of an aided school place, included the expenditure incurred by the Social Welfare Department (SWD) for the provision of grants covering schooling expenses to students on Comprehensive Social Security Assistance (CSSA); if not, of the details and reasons for that, and whether it has assessed if such a practice will make the amount of subsidy received by a DSS actually lower than that of an aided school;*
- (b) *whether it has assessed whether and how the implementation of the new senior secondary academic structure will affect the amount of recurrent subsidy allocated to a DSS; and*

- (c) *as the Education Bureau calculates the recurrent subsidies for DSSs on the basis of the average unit cost of an aided school place in the previous school year, whether the Administration is aware that the additional expenditure incurred for the preparation for the new senior secondary academic structure, such as teacher training, by aided schools will only be reflected in its grants to DSSs in the next school year; whether the Administration will consider providing the additional subsidies required for the preparation for the new senior secondary academic structure concurrently to aided schools and DSSs, so as to avoid DSSs having to face financial difficulties as a result of such additional expenditure?*

**SECRETARY FOR EDUCATION (in Chinese):** President,

- (a) The recurrent government subsidy payable to DSS schools is calculated in terms of average unit cost of an aided school place. The amount of subsidy has reflected the general subsidies provided for aided schools by the Government, such as subsidy for staff salary, expenses on Provident Fund and grants for class, subject and curriculum. Other than the abovementioned subsidies, eligible DSS schools meeting the prescribed criteria can also apply through the same mechanism in aided schools for other subsidies including rates and Government rent reimbursement, Capacity Enhancement Grant, Grant for School-based After-school Learning and Support Programme, School-based Support Scheme Grant for Newly Arrived Children, Special One-off Information Technology Grant, Grant for Whole-school Approach to Integrated Education Programme, Project Grant to Resource Schools on Whole-school Approach, Grants to Support the Establishment and Operation of Incorporated Management Committee, Special Grant for Designated Schools in Support of Non-Chinese Speaking Students, Intensive Learning Support Grant (only applicable to primary schools), Mortgage Interest Subsidy, Grant for Small Class Teaching Scheme in Primary Schools with High Concentration of Disadvantaged Students (only applicable to primary schools), Applied Learning Grant (only applicable to secondary schools) and Grant for Yi Jin/Secondary Schools Collaboration Project (only applicable to

secondary schools). As these subsidies are not applicable to all schools, they are not calculated in the average unit cost of an aided school place.

In the calculation of the average unit cost of an aided school place, the expenditure incurred by the SWD for the provision of grants covering school fee and other schooling related expenses to students on CSSA is not included. It is because the grants are provided to the recipient's family direct for payment of schooling expenses which are not related to the income and expenditure of schools. Hence, the recurrent subsidy received by a DSS school will not be affected.

- (b) The recurrent subsidy payable to DSS schools is calculated in terms of the average unit cost of an aided school place. The provision for aided schools under the new senior secondary academic structure will be taken into account in computing the average unit cost of an aided school place and the recurrent DSS subsidy applicable to that school year in accordance with the prevailing practice. As there is no concrete figure at this stage, the Education Bureau has difficulty in making precise assessment on the impact.
- (c) It is not true that the additional expenditure incurred for the preparation for the new senior secondary academic structure, such as the Teacher Professional Preparation Grant which was made available to schools commencing 2006-2007 school year, is reflected in the grants payable to DSS schools only in the next school year. The grant was included in calculating the projected DSS unit subsidy rate for 2006-2007 and was disbursed concurrently with aided schools in October 2006. Expenses of new measures or grants to be provided for the preparation of the new senior secondary academic structure in aided schools will be provided to aided schools and DSS schools concurrently in the same school year. The Education Bureau will make adjustments according to the actual average unit cost of an aided school place after the school year ended. Generally speaking, the adjustment is not significant and will not make DSS schools having to face financial difficulties.

**Emergency Ambulance Service**

12. **MR LAU KONG-WAH** (in Chinese): *President, regarding the emergency ambulance service (EAS) of the Fire Services Department (FSD), will the Government inform this Council:*

- (a) among the ambulances deployed to provide the above service, of the respective numbers of those which were damaged, replaced or procured in the past five years, broken down by the divisions under the Ambulance Command of FSD, as well as the numbers of emergency ambulance calls received by various divisions in the same period;*
- (b) of the number of cases (except special cases involving incidents in remote rural areas), in each of the past five years, in which ambulances failed to arrive at the scene of incident within 12 minutes of receiving emergency ambulance calls, the districts with relatively higher ratio of such cases and the reasons for that, and whether the situation was related to the insufficient number of ambulances;*
- (c) of the number of times ambulances were deployed to provide cross-district EAS in the past five years; and*
- (d) whether the authorities have, on the basis of the above figures, assessed if the existing EAS is adequate?*

**SECRETARY FOR SECURITY** (in Chinese): *President,*

- (a) The numbers of ambulances damaged, replaced and additionally acquired in the past five years, broken down by the divisions under the Ambulance Command, are as follows:*

Year	<i>No. of ambulances damaged</i>				<i>No. of ambulances replaced</i>				<i>No. of ambulances additionally acquired</i>			
	<i>Hong Kong Division</i>	<i>Kowloon Division</i>	<i>New Territories East and West Division</i>	<i>New Territories South Division</i>	<i>Hong Kong Division</i>	<i>Kowloon Division</i>	<i>New Territories East and West Division</i>	<i>New Territories South Division</i>	<i>Hong Kong Division</i>	<i>Kowloon Division</i>	<i>New Territories East and West Division</i>	<i>New Territories South Division</i>
2003	-	-	-	-	-	-	-	-	-	-	-	-
2004	2	-	1	-	9	9	6	8	1	3	-	3
2005	1	-	1	-	2	-	6	4	-	3	-	1
2006	-	1	-	-	-	-	-	-	-	-	-	-
2007	1	1	2	1	-	-	-	-	-	-	-	-
Total	11				44				11			

Note: As the FSD will flexibly deploy its ambulances to ambulance depots in different districts in view of the actual demand for ambulance service, the above figures only indicate the division of the ambulances' base depots when they were damaged, replaced or acquired, but not the division of their current base depots.

The numbers of emergency ambulance calls in the past five years, broken down by call addresses, are as follows:

Year	<i>No. of emergency ambulance calls</i>			
	<i>Hong Kong</i>	<i>Kowloon</i>	<i>New Territories</i>	<i>Total</i>
2003	95 058	185 709	197 342	478 109
2004	103 590	209 715	223 054	536 359
2005	105 579	214 629	229 658	549 866
2006	103 248	211 780	224 875	539 903
2007	109 208	223 837	240 612	573 657

Note: The FSD does not have the breakdown figures for the New Territories East and West Division and the New Territories South Division.

- (b) Under the performance pledge of the FSD, an ambulance will arrive at the street address of the scene within 12 minutes from the time of call for 92.5% of all emergency ambulance calls. In the past five years, there were only a small number of emergency ambulance calls where the performance target of 12 minutes was not met. The detailed figures are as follows:

<i>Year</i>	<i>No. of emergency ambulance calls with response time exceeding 12 minutes</i>			
	<i>Hong Kong</i>	<i>Kowloon</i>	<i>New Territories</i>	<i>Total</i>
2003	4 634 (4.87%)	12 547 (6.76%)	14 393 (7.29%)	31 574 (6.60%)
2004	6 057 (5.85%)	19 494 (9.30%)	21 155 (9.48%)	46 706 (8.71%)
2005	7 605 (7.20%)	20 507 (9.55%)	28 893 (12.58%)	57 005 (10.37%)
2006	5 648 (5.47%)	12 613 (5.96%)	19 861 (8.83%)	38 122 (7.06%)
2007	6 646 (6.09%)	13 763 (6.15%)	19 988 (8.31%)	40 397 (7.04%)

Note: Figures in brackets are the ratios to the total number of emergency ambulance calls in the relevant district.

Response time is affected by many factors, including travelling distance, traffic and weather conditions, and so on. According to our records, generally speaking, the percentage of calls in the New Territories with response time exceeding 12 minutes is slightly higher than those of the other regions. The FSD believes that this is mainly due to the comparatively larger geographical coverage of the New Territories region and hence the longer travelling time required.

- (c) With a view to providing the timeliest EAS to the injured persons or patients, the FSD's existing mobilizing system will automatically identify and assign the ambulance that can reach the scene within the shortest time to attend to the call, without being restricted by the boundaries or districts of fire stations or ambulance depots. As a result, ambulances are required to travel to various districts of the territory to meet operational needs. In fact, when assigning the suitable ambulance, the mobilizing system will only consider the real-time location of the ambulance and the time it will take to arrive at the street address. To improve the coverage and the response time of EAS, the FSD will flexibly deploy the ambulance resources of different districts and, if necessary, move up ambulances to other fire stations and ambulance depots as stand-bys having regard to the actual needs. As the operational area of an ambulance is not based on the location of its base depot, figures regarding cross-district dispatch are not available.
- (d) In 2007, the overall service of the FSD has met its performance pledge. Ambulances can arrive at the scene within 12 minutes in

slightly over 92.5% of the emergency calls. Notwithstanding this, we will continue to make our best efforts to closely monitor the demand for EAS. Apart from flexibly utilizing our existing equipment and manpower, we will consider allocating additional resources where necessary.

### **Operation of Fire Safety (Buildings) Ordinance**

13. **MR JAMES TO** (in Chinese): *President, the Fire Safety (Buildings) Ordinance (Cap. 572), which aims to upgrade the fire safety standards of private composite and domestic buildings built in or before 1987, has come into operation in three phases since 1 July last year, with the first phase targeting at 5 000 private composite buildings built in or before 1973. To complement the operation of the Ordinance, the Fire Services Department (FSD) and Buildings Department (BD) have commenced inspection of buildings and served fire safety directions in respect of fire safety measures to the owners concerned. In this connection, will the Government inform this Council:*

- (a) *of the number of target buildings in each District Council district, and the respective numbers of such buildings which have been inspected and need to improve their fire safety measures;*
- (b) *given that the FSD and BD will, according to actual circumstances, permit owners to adopt alternative measures (such as installing a water tank of smaller capacity) in lieu of the fire safety measures required in the Ordinance, of the number of buildings which have so far been approved to adopt alternative measures, with the figure broken down by such measures;*
- (c) *as some property owners have told me that the BD recently served orders on them for replacement of the main gates of their units but the FSD had not contacted them on other fire safety matters, whether the FSD and BD have had co-ordination over their inspection work so that the owners concerned can conduct the required fire safety works in one go; and*
- (d) *for buildings not being the target of the first phase of the Ordinance, whether the BD will take the initiative to inform the FSD to inspect*

*such buildings when the former serves to the owners concerned orders for removal of unauthorized building works; if it will, of the number of such buildings which have been inspected by the FSD so far?*

**SECRETARY FOR SECURITY** (in Chinese): President,

- (a) It is the plan of the FSD to carry out between 2007 and 2013 the first phase of the implementation work for the Fire Safety (Buildings) Ordinance (the Ordinance), which mainly covers the inspection of private composite buildings built in or before 1973. The BD estimates that there are about some 5 000 of these buildings in Hong Kong at present. As at 30 April 2008, the FSD has completed the inspection of 890 of them. The relevant figures for each District Council district are set out in the table below:

<i>District</i>	<i>No. of composite buildings built in or before 1973</i>	<i>No. of composite buildings inspected</i>
Central and Western	900	99
Eastern	310	56
Southern	100	12
Wan Chai	700	82
Islands	5	3
Kwun Tong	150	31
Sai Kung	2	1
Yau Tsim Mong	1 420	199
Sham Shui Po	720	124
Kowloon City	500	134
Wong Tai Sin	150	45
Kwai Tsing	40	12
Tsuen Wan	200	17
North	80	38
Sha Tin	20	2
Tai Po	70	9
Tuen Mun	15	4
Yuen Long	55	22
Total	5 437	890

All of the inspected composite buildings mentioned above are required to carry out suitable improvement works under the Ordinance.

- (b) As we pledged in the meeting of the Panel on Security on 25 January 2007, the FSD and BD, without compromising fire safety, are adopting a flexible and pragmatic approach in enforcing the requirements of the Ordinance.

Among the 890 composite buildings inspected by the FSD, 501 buildings with not more than six storeys have been exempted from the requirement to install fire hydrants. The FSD has also reduced the required capacity of the fire service water tanks from 9 000 litres to 2 000 litres for these 501 buildings, having regard to the actual circumstances. Furthermore, another 33 composite buildings have been exempted from the requirement to increase the capacity of their existing fire service water tanks to 9 000 litres.

- (c) and (d)

During its large-scale removal operations, the BD may serve removal orders pursuant to the Buildings Ordinance on owners of the target buildings in respect of their unauthorized building works, which include metal gates that contravene the Buildings Ordinance. Once the list of target buildings have been drawn up, the BD will issue letters to notify the owners concerned about the removal operation.

The objectives, implementation schedules, target buildings and the required improvement works of the BD's large-scale removal operations are all different from those of the Ordinance. However, if the target buildings of the removal operations are also among those covered by the Ordinance (that is, composite or residential buildings built in or before 1987), the BD would remind the owners concerned in the letters mentioned above that they might also be required to carry out certain fire safety improvement works under the Ordinance, and urge them to consider carrying both types of works together. For composite buildings built in or before 1973, the FSD will arrange for a physical inspection of the buildings

shortly after the BD issued the notification letter mentioned above, and inform the owners the details in writing of the required fire service installation and improvement works having regard to the actual circumstances. For composite buildings built between 1973 and 1987 and domestic buildings built in or before 1987, if the owners are willing to remove the unauthorized building works and carry out the fire safety improvement works at the same time, the FSD and BD will co-ordinate to cover those buildings in their inspection schedules as early as possible. As at 30 April 2008, the FSD has advanced the inspection of 84 buildings built after 1973 at the owners' request.

### **Impact of Closer Links Across Taiwan Strait**

14. **DR DAVID LI:** *President, for many years, Hong Kong has served as an intermediary for passengers and cargoes travelling between the Mainland and Taiwan. However, the planned "Three Direct Links" across the Taiwan Strait following the election victory of MA Yingjeou has raised concern that Hong Kong will see its above role diminishing in future. In this connection, will the Government inform this Council:*

- (a) whether it has estimated the potential economic loss to Hong Kong once the "Three Direct Links" are established; if it has, of the outcome; and*
- (b) whether it will consider implementing a policy to take advantage of the opportunities arising from the closer links across the Taiwan Strait, including but not limited to encouraging Taiwanese corporations to list on the stock exchange of Hong Kong and promoting Hong Kong as an arbitration centre?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT:**  
President,

- (a) We estimate that at the early stage of implementing the "Three Direct Links", the traffic between Hong Kong and Taiwan in respect of passengers destined for the major cities of Mainland through

Hong Kong, and the cargo transshipments to and from ports outside the Pearl River Delta Region, will be slightly affected. The actual impact on Hong Kong will depend on the implementation programme of various measures and the detailed arrangements.

In the longer term, economic and trade exchanges between the Mainland, Hong Kong, Macao and Taiwan will become more liberal, enabling the four places to take better advantages of their respective edges and creating synergy and complementary effects. This will benefit regional trade, as well as the overall economic co-operation and long-term development of the four places. Hong Kong is a global hub of finance and logistics and an international business centre, with a sound legal system, free and open information network, free flow of capital and a free market of foreign exchange. With these competitive advantages in the region, Hong Kong can play an important role in providing support services in this greater economic circle. This will be conducive to developing more business opportunities and strengthening of investor confidence, such as attracting more Taiwan enterprises to raise capital and list in Hong Kong. The "Three Direct Links" will also facilitate the development of business and leisure travel in the region. We therefore believe that, in the longer term, Hong Kong will benefit from the "Three Direct Links".

- (b) The Government of the Hong Kong Special Administrative Region (HKSAR) will face and adapt to the changes arising from the "Three Direct Links" in a proactive manner. With closer relationships across the Strait, the HKSAR Government will continue to enhance exchanges between Hong Kong and Taiwan. To promote mutual understanding among the people of the four places, we have allocated additional resources in the 2008-2009 Budget to sponsor exchange activities between Hong Kong and Taiwan, such as co-organizing seminars and other activities. We will also invite Taiwan personalities in the political, academic and other sectors to visit Hong Kong, with a view to introducing to them our latest development.

On financial services, the HKSAR Government will continue to capitalize on the role of Hong Kong as an international financial centre to facilitate the investment and development of both Mainland and Taiwan enterprises across the Strait. The Stock Exchange of Hong Kong will continue to proactively promote Hong Kong as a listing platform to enterprises from different places (including Taiwan), and step up promotional activities to publicize the unique strengths of Hong Kong as the premier capital formation centre in the region. It will also continue to closely monitor the possible impact of the planned "Three Direct Links" to the financial services industry, including the listing platform.

In respect of trade, Taiwan is the fourth largest trading partner of Hong Kong. The HKSAR Government has been actively encouraging economic and trade exchanges between Hong Kong and Taiwan. In particular, Invest Hong Kong has been promoting Hong Kong as a prime investment destination for Taiwan enterprises, and will continue to attract Taiwan enterprises to establish regional headquarters or companies in Hong Kong. The Hong Kong Trade Development Council (TDC) will also continue to promote trade between Hong Kong and Taiwan, as well as Hong Kong's role as the commerce and trade platform for entry into the mainland market. To enhance such promotional activities, TDC has applied to the Taiwan side to establish an office in Taipei. We believe that Hong Kong, being an important service provider for trade across the Strait, will continue to assume a strategic role after the implementation of the "Three Direct Links", contributing positively to the economic and trade relations of the four places.

In respect of tourism, we will continue to co-operate with the travel industry to upgrade our service quality and enhance Hong Kong's appeal as a premier tourist destination. We will also develop "multi-destination" itineraries and open new segments to attract visitors for conventions and exhibitions travels and cruise tourism. Through new services and enhancement of existing services, we strive to attract new visitors to cover any possible loss.

In respect of cargo transshipment, with our advantageous geographical location as well as our efficient airport and ports, we should be able to continue to attract entrepot trade through Hong Kong.

In respect of arbitration services, the HKSAR Government is actively promoting arbitration services and developing Hong Kong as an international arbitration centre in the Asia-Pacific Region. The HKSAR Government is reforming the arbitration law in order to enhance our competitive edge in international arbitration. Furthermore, the HKSAR Government is in touch with a number of leading international arbitration bodies to explore the feasibility of their establishing branches in Hong Kong. The International Court of Arbitration of the International Chamber of Commerce has decided to set up a branch of its Secretariat in Hong Kong shortly. We believe that Hong Kong will be able to provide top-class and absolutely neutral mediation and arbitration services for disputes involving enterprises across the Strait.

### **Review of Personal Data (Privacy) Ordinance**

15. **MS EMILY LAU** (in Chinese): *President, in the press release issued on 19 February this year regarding the circulation of nude photos of artistes on the Internet, the Office of the Privacy Commissioner for Personal Data (the Commissioner's Office) stated that there was a pressing need for the authorities to consider amending the Personal Data (Privacy) Ordinance (Cap. 486) (the Ordinance) by making it an offence to, without the consent of a data user, intentionally obtain or disclose the personal data held or leaked by the data user or sell the personal data so obtained. In addition, in reply to a question raised by a Member of this Council on 20 February this year, the authorities advised that making non-compliance with the data protection principles an offence would have a significant impact on civil liberty as a data user would face criminal liability for an inadvertent act or omission. In this connection, will the executive authorities inform this Council:*

- (a) *whether they know if the Commissioner's Office has conducted public consultation on the proposal to amend the Ordinance; if it has, of the outcome of the consultation; if not, the reasons for that;*

- (b) *whether the authorities will appoint independent persons to review the Ordinance and provide an objective analysis;*
- (c) *whether they have assessed if the Commissioner's Office has adequate resources and power to investigate and handle the several recent incidents in which equipment and devices containing personal data were lost; and*
- (d) *as the authorities have advised that even with the imposition of an express mandatory legal responsibility on data users to inform the privacy authority and the persons affected when there are problems with the security of data or leakage of the personal data held by them, it cannot prevent data leakage, of the authorities' alternative proposed measures that can prevent data leakage, and whether the authorities will consider the proposal of the Commissioner's Office to amend the Ordinance?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Chinese): President,

- (a) The Government is discussing with the Office of the Privacy Commissioner for Personal Data (PCO) the various issues covered in the review of the Personal Data (Privacy) Ordinance (PDPO), with a view to mapping out the way forward. At an appropriate time, the public will be consulted if proposals are to be put forth.
- (b) As the independent statutory body responsible for implementation of the PDPO, the PCO is in the position to make recommendations to the Administration on the review of the Ordinance. In addition, the Personal Data (Privacy) Advisory Committee established under the PDPO, which comprises the Privacy Commissioner (PC) as Chairman, seven non-official members and one Government representative, advises the PC on matters relevant to the privacy of individuals in relation to personal data or otherwise relevant to the operation of the Ordinance.
- (c) In 2008-2009, we have provided an additional funding of \$2.8 million to the PCO, of which \$1.8 million is for strengthening

PCO's manpower in the enforcement of the PDPO by creating three additional posts. The other \$1 million is for strengthening PCO's promotion and educational work to enhance public awareness of personal data protection. The Government has in place a resource allocation mechanism for Government departments and subvented bodies to review regularly their resource requirements. If the PCO needs extra resources, they can submit a bid to the Government under this mechanism.

The PDPO confers upon the PC with powers to inspect personal data systems, and to investigate into complaints and possible contraventions of the Ordinance. The PC has the power of entry on premises for the purposes of an inspection or investigation. The PC may also summon before him any person who, in the PC's opinion, is able to give any information relevant to the suspected contravention, examine such person and require the person to furnish to the PC any evidence relevant to such purposes during an investigation. These powers have enabled the PC to discharge his enforcement functions under the PDPO effectively.

- (d) The PCO has conceived certain proposals which may help prevent data leakage. They include, inter alia, creating a new offence against persons who knowingly or recklessly, without the consent of the data user, obtain or disclose or procure for such disclosure personal data held or leaked by the data user, or sell or offer to sell the data so obtained. As these proposals will have far reaching implications on the IT industry, public and private organizations as well as the community as a whole, we will first have to discuss the feasibility of these proposals with the PCO and to consider whether there is sufficient justification for criminalizing such actions, before deciding on the way forward.

### **Food Safety of Canned Food**

16. **MR LAU KONG-WAH** (in Chinese): *President, regarding food safety of canned food, will the Government inform this Council:*

- (a) *of the total number of complaints received in the past three years from members of the public alleging that they felt unwell following the consumption of canned food;*
- (b) *of the details of its work in conducting regular laboratory sample tests on canned food products sold at supermarkets and small stores, the number of canned food samples found in the past three years to have failed to meet the food safety requirements and the relevant details, as well as the follow-up actions taken, including the number of warning letters issued to the retailers concerned; and*
- (c) *whether it has assessed if the situation of retailers selling canned food products not imported through local dealers is common at present, and as such canned food products may not have gone through the food quality inspection procedure at their places of origin, whether a greater number of canned food samples have been collected by the authorities for testing?*

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

- (a) In the past three years, the Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department received a total of 12 complaints relating to discomfort following the consumption of canned food. Upon receiving complaints, the CFS will ask the complainants to provide detailed information relating to the purchase, handling and consumption of the canned food, collect food residues, and collect samples from the relevant sellers for testing. After the investigations, it could not be confirmed that the abovementioned 12 cases were connected with the consumption of canned food.
- (b) To ensure food safety, the CFS takes food samples at import, wholesale and retail levels regularly for chemical and microbiological testings. Since 2007, the CFS has started to adopt a three-tier approach to food surveillance, comprising of routine food surveillance, targeted food surveillance and seasonal food

surveillance. Food samples collected under food surveillance cover various types of food, including canned food.

In the past three years, the CFS has taken about 2 300 canned food samples for testing, of which some 1 900 samples were collected for chemical testing for preservatives, colouring matters, veterinary drug residues, and so on, while some 400 samples for microbiological testing. For microbiological testing, all the testing results of the food samples were satisfactory. As for chemical testing, the results of 12 canned food samples were unsatisfactory. The 12 unsatisfactory samples were canned food manufactured in different places including the Mainland and countries in Asia and North America. Chemicals detected included trace amount of veterinary drug residues and preservatives at a level slightly exceeding the limit, but adverse health effect is unlikely upon normal consumption.

The CFS has traced the source and distribution channels of the 12 canned food with unsatisfactory testing results and made public the results immediately. The CFS has also issued warning letters to relevant parties requiring them to stop selling and recall the problem food products forthwith.

- (c) In Hong Kong, there is no restriction on the source of canned food for sale. The Administration therefore has not assessed the situation of the sale of food items not imported through local dealers. Under the Public Health and Municipal Services Ordinance (Cap. 132), all food (including canned food) sold in Hong Kong must be fit for human consumption and meet the requirements of the subsidiary legislation relating to food safety and food standards. Food importers, wholesalers and retailers all bear the responsibility to ensure that the food they sell is fit for human consumption and meet the relevant legal requirements.

The CFS takes into account the latest results of local and overseas risk assessment in determining the types of samples to be collected, the frequency and the number of samples for testing. The

sampling priority is under constant review of the CFS, and the CFS will conduct surveillance on specific food items and hazards as necessary.

Moreover, the Administration is formulating the Food Safety Bill, under which all food importers and distributors will be required to register with the Food Safety Authority. The food business is also required to keep record on the source and distribution of all food (food retailers are only required to keep relevant record on the suppliers of the food), so that in the event of a food incident, the Administration can trace the source and distribution of the problem food more promptly and take appropriate measures to minimize its impact. The Bill will also empower the Food Safety Authority to issue an order to prohibit the import or sale of the problem food and to issue a food recall order when the situation warrants. The proposed measures will facilitate the Authority in preventing the problem food from entering the market or remaining on market shelves when it has reasonable grounds to believe that the problem food might be injurious to public health.

### **Enteroviral Infection Cases**

17. **MR FREDERICK FUNG** (in Chinese): *President, as reported, an epidemic of enteroviral infections among young children has swept through a number of mainland cities in recent months, resulting in several thousand hospital admissions and dozens of deaths so far. In this connection, will the Government inform this Council:*

- (a) *whether it has grasped the latest information about the epidemic on the Mainland, including the types of viral strains found in such cases in various places, the transmission mode of the disease, the mutation of the virus, and so on, and whether it has, based on the relevant information, assessed the risk of an outbreak of an epidemic of enteroviral infections in Hong Kong; if it has, of the results; if not, the reasons for that;*

- (b) *of the number of enteroviral illness cases found in Hong Kong in recent months; whether it has analyzed the transmission mode for such cases and the trend of infections, as well as compared them with the epidemic on the Mainland; if so, of the results of analysis; and*
- (c) *of the specific measures to prevent a local outbreak of an epidemic of enteroviral infections, for example, whether it will strengthen monitoring and raise the hygiene levels in high-risk places such as child care centres and kindergartens, and expeditiously disseminate information about the epidemic to members of the public?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, the Government is on guard against Hand-Foot-Mouth Disease (HFMD) and Enterovirus (EV-71) infections and is implementing comprehensive preventive, control and surveillance measures to protect public health. In view of recent upsurge in HFMD and EV-71 infections in some parts of the Mainland and neighbouring regions including Taiwan and Singapore, Hong Kong should remain vigilant. Our reply to the various parts of the question is as follows:

- (a) The Centre for Health Protection (CHP) of the Department of Health (DH) has already put in place a surveillance system to closely monitor HFMD and EV-71 infections in Hong Kong and neighbouring regions. The surveillance system includes outbreak notification, laboratory surveillance and sentinel surveillance at specific clinics and child care centres. In addition, the CHP has maintained close liaison with the Ministry of Health and the health authorities of Guangdong Province and Macao through an established mechanism. A point-to-point instant communication mechanism has also been set up among the three places to facilitate timely exchange of information about any sudden upsurge in infectious diseases of unknown nature or of public health significance. In response to the recent situation of HFMD and EV-71 infections in the Mainland, the CHP has maintained good communication with the Ministry of Health and the health authorities of neighbouring places to keep track of the latest development.

HFMD is caused by viruses. It is transmitted by direct contact with nasal and throat discharges, saliva, erupted blisters, or the stool of infected persons. In Hong Kong, Coxsackie A virus is the most common causative agent for HFMD, causing about 75% of HFMD outbreaks. EV-71 virus is another causative agent for HFMD and associated with some 20% of HFMD outbreaks in Hong Kong.

HFMD occurs in Hong Kong throughout the year and the peak is usually in summer time, particularly between May and August. The surveillance figures of the CHP indicate that there has been an increase in HFMD cases in recent months. According to surveillance figures reported in April, the consultation rate for HFMD cases among sentinel private doctors ranged from 1.3 to 1.9 cases per 1 000 consultations, which was higher than that reported in March (ranged from 0.5 to 1.5 cases per 1 000 consultations).

- (b) From 1 January to 19 May 2008, a total of 22 cases of EV-71 infections were recorded in Hong Kong. The figure is higher than that recorded in the corresponding period in previous years. Details are as follows:

Number of EV-71 cases in Hong Kong in recent years

<i>Year</i>	<i>Number of cases</i>	<i>Number of fatal cases</i>
2004	35	0
2005	8	0
2006	16	0
2007	12	0
2008 (as at 19 May)	22	0

So far this year, the Mainland has recorded over 41 000 HFMD cases, most occurred in Anhui Province, Guangdong Province, Jiangsu Province, Shanghai Municipality, Henan Province, Zhejiang Province, and so on. The mode of transmission of HFMD in the Mainland is similar to that in Hong Kong, that is, usually through droplets and contact with erupted blisters or the stool of infected persons.

- (c) For effective prevention and control of EV-71 infections and HFMD, there must be close collaboration among the Government, the health care sector, schools, institutions and parents to reinforce personal and environmental hygiene measures. It is also important to detect the disease at an early stage, to make prompt diagnosis and to closely monitor for outbreaks and swiftly adopt infection control measures.

The CHP has been working closely with the Hospital Authority and private hospitals to conduct surveillance on children with severe complications caused by EV-71 since 9 May.

The CHP may consider advising affected schools, child care centres or kindergartens to suspend classes for thorough cleansing and disinfection for a period of 14 days when situation warrants. The DH and related departments have briefed the management of schools and nurseries as well as parents on the latest development about EV-71 and HFMD and the preventive measures through health talks, letters, posters and leaflets.

In addition, the CHP has issued guidelines on clinical diagnosis and management of EV-71 infections and HFMD to doctors to facilitate appropriate clinical treatments. The DH will also distribute pamphlets about HFMD to travellers at immigration checkpoints and provide the tourist industry with the latest information.

Timely risk communication can enhance understanding of the disease and raise the awareness among the general public. In this connection, the CHP has since 9 May uploaded onto its website < [www.chp.gov.hk](http://www.chp.gov.hk) > a daily report on the latest development of EV-71 and HFMD in Hong Kong and neighbouring regions. Besides, publicity through television and radio will also be intensified to increase public alertness.

### **Implementation of Small-class Teaching in Special Schools**

18. **MR CHEUNG MAN-KWONG** (in Chinese): *President, the Chief Executive announced in last year's policy address that starting from the*

*2009-2010 school year, small-class teaching would be implemented by phases in Primary One of public primary schools. Subsequently, the Education Bureau advised the Panel on Education of this Council in February this year that they had been "reviewing the class sizes of the different categories of special schools with regard to their practical needs and will further discuss with stakeholders in the coming months". In this connection, will the Government inform this Council of:*

- (a) the criteria adopted by the Education Bureau for reviewing the class sizes of various categories of special schools, including schools for children with visual impairment, hearing impairment, physical disability, intellectual disability, as well as schools for social development and hospital schools; a breakdown of such criteria should they vary among school categories; and*
- (b) the latest progress of the Education Bureau's review on the class sizes of special schools; whether the Education Bureau has plans to announce the review results and revise the class sizes within the current school year; if it has, of the details, including the announcement date; if not, the reasons for that?*

**SECRETARY FOR EDUCATION (in Chinese):** President,

- (a) Special schools have already implemented small-class teaching, with the number of students per class ranging from eight to 20. We are examining the class sizes of different categories of special schools, and the special educational needs of students are our major consideration. In the light of curriculum, learning and teaching and counseling, we shall consider the teaching and specialist staff establishment and other resources of the schools as well as the resource implications of changing the class sizes, and so on.
- (b) We have been liaising and exchanging views with the special schools on their proposals and justifications for changing the class sizes. We are deliberating the proposals and anticipate that we shall announce the decision within this year.

**Security of Patient Information**

19. **MR CHEUNG HOK-MING** (in Chinese): *President, regarding the recent several incidents of loss of patient information by health care workers of the Department of Health (DH) and public hospitals, will the Government inform this Council:*

- (a) *of the total number of reports received since May last year by the authorities on the loss of patient information by the above health care workers, and among such cases, the number of those in which electronic devices were used for storing the information concerned, as well as the circumstances under which the health care workers involved lost such information;*
- (b) *of the details of the guidelines and codes drawn up by the authorities on access to patients' medical records by health care workers of various ranks (including the circumstances under which health care workers may take information of the patients concerned out of the hospitals or offices, and whether health care workers are allowed to store patient information by any means on their own initiative); and*
- (c) *whether the authorities will consider providing training courses on security of electronic data for health care workers, in order to enhance their awareness of security in handling patient information by means of electronic devices?*

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

- (a) Since May last year, the Hospital Authority (HA) has received nine reports of loss of patient data stored in electronic devices, of which seven took place in hospitals/clinics and two outside hospitals/clinics. Among these nine cases, six were theft-related while the remaining three were due to negligence.

In the same period, the DH recorded one incident of loss of identifiable patient data by health care workers. It involved the

loss of a USB disk which was previously inserted to a computer in the consultation room of the DH's Child Assessment Centre.

- (b) To protect patient data, the HA has put in place guidelines and codes on a number of areas such as the collection, use, access, retention, as well as technical and physical protection of data. These HA guidelines and codes have been promulgated to front-line staff through circulars, booklets, the HA intranet and seminars and briefings on information technology for hospital staff.

It has been the HA's established policy that only health care personnel in charge of a patient will be allowed to access patient data on the "patients under medical care" and "need to know" basis. The HA requires its staff to replace identifiable patient information and personal particulars with "pseudo-identifiers" as far as practicable when they download the relevant data for work or academic research. If the data to be downloaded contain any identifiable patient information and personal particulars, such data should be encrypted. The HA allows health care staff to access the patient data outside hospitals/clinics out of operational needs under certain circumstances, for example, when the HA's doctors provide service at residential care homes of the elderly or when community nurses provide service at their patients' homes. The HA's relevant policies and guidelines require its staff to take appropriate security and safety measures in handling and storing the patients data.

Besides, the HA's Clinical Management System (CMS) has been operating smoothly since its introduction in 1995. All patient data has been properly maintained in the system and there has never been a case of leakage/loss of patient data due to systemic problem of CMS. All access of patient data is recorded in CMS, which renders the use of data by health care staff traceable and prevents illegal access to data. The HA has also put in place a reporting system on loss of patient data. With effect from 19 May 2008, any leakage/loss of patient data must be reported by the relevant staff to the hospital through the HA's internal Advanced Incident Reporting System as soon as possible, while the hospital must submit a

preliminary report to the HA Head Office within 48 hours after the incident and explain the situation to the affected patients in two weeks' time.

Following the recent incidents of loss of patient data, the HA has implemented a series of measures to enhance the protection of patient data. These include the issue of circulars to staff to remind them of the importance of protecting the privacy of patient and the upgrading of patient information system to protect the downloaded patient data (including names and identity card numbers) through encryption. Before the upgrading of the information system completes, HA staff are not allowed to take away removable electronic storage devices from hospitals without prior approval from the Hospital Chief Executives or their delegates. The HA has also set up the Task Force on Patient Data Security and Privacy to review its existing policies and security systems on patient data protection and to recommend improvement measures.

The DH also places great emphasis on the protection of patient privacy and has internal guidelines for the handling of personal data. The guidelines are modelled on the data protection principles of the Personal Data (Privacy) Ordinance. Staff of the DH's Service Units are required to observe the guidelines, which are applicable to access and use of medical records by health care workers. Among others, the guidelines require that personal data collection and use should be necessary and directly related to the purpose of the Services' function.

To avoid similar incidents from happening again, unless under exceptional circumstances and with the prior approval of the heads of Service, storage of identifiable personal data in any removal storage media, as well as transmission of data away from the DH by any means will not be allowed in all DH Service Units. If approved, staff should keep storage of identifiable personal information in removable storage media or transmission of data to a

minimum that is essential for operational needs, and such information must be encrypted. The information should be immediately removed after use.

- (c) The HA has been promoting staff's awareness of the importance of patient data protection through various channels, such as staff seminars, newsletters, video clips and HA intranet. The HA will review and continue to strengthen the measures in this regard including educating the staff about the knowledge of data protection.

In addition, the Civil Service Training and Development Institute has been organizing courses for staff on protection of electronic data. The DH also regularly recirculates guidelines on the handling of patient data by electronic means with a view to raising staff's alertness to security. In view of recent incidents, the Department will strengthen training in this area.

### **Appointment of District Council Members**

20. **MR FRED LI** (in Chinese): *President, in 2003, the Government provided to this Council the criteria for appointing members of the District Councils (DCs), one of which being that candidates who took part and were not elected in the 2003 DC election would not be appointed as DC members. In this connection, will the Government inform this Council:*

- (a) *among the appointed DC members of the current term, of the number of those who were candidates and were not elected in the 2003 DC election, as well as their names and DCs to which they belong;*
- (b) *of the reasons why the Government appointed such persons as DC members of the current term; and*
- (c) *whether it has assessed if the appointment of such persons has contravened the above appointment criterion; if it has, of the*

*outcome of the assessment; if the assessment outcome is in the affirmative, the remedial measures to be taken; if the assessment outcome is in the negative, the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in the absence of Secretary for Home Affairs) (in Chinese): President, in appointing members to the DCs, the Administration will take into account the candidate's ability, professional knowledge, experience, integrity, as well as his commitment to serve the community to ensure that the most suitable persons are appointed as DC members. In line with the Administration's criteria for appointing members of the DCs, none of the candidates who lost in the 2003 DC Election was appointed to the second term (2004-2007) DC.

Appointment to the current term DC is independent of the election results of the 2003 DC Election. On the basis of the principles as set out above, none of the appointed members of the current term DC participated and lost in the 2007 DC Election.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Fugitive Offenders Ordinance to extend the period for repealing the Fugitive Offenders (Transnational Organized Crime) Order.

I now call upon Mr James TO to speak and move his motion.

## **PROPOSED RESOLUTION UNDER THE FUGITIVE OFFENDERS ORDINANCE**

**MR JAMES TO** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, the Fugitive Offenders (Transnational Organized Crime) Order was made in accordance with the Fugitive Offenders Ordinance and we need

some time to scrutinize the Order. Although we have convened meetings and the scrutiny is almost completed, some more time is necessary. We thus request that the period for repealing the Order be extended.

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

"RESOLVED that in relation to the Fugitive Offenders (Transnational Organized Crime) Order, published in the Gazette as Legal Notice No. 78 of 2008 and laid on the table of the Legislative Council on 23 April 2008, the period for repealing an order referred to in section 3(3) of the Fugitive Offenders Ordinance (Cap. 503) be extended under section 3(5) of that Ordinance to the meeting of 11 June 2008."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr James TO be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Motion with no legislative effect. Inclusion of general holidays as statutory holidays. Mr LEE Cheuk-yan should move his motion at this point, but .....

(Mr LEE Cheuk-yan hurried into the Chamber)

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan has got back in time. I now call upon Mr LEE Cheuk-yan to speak and move his motion.

### **INCLUSION OF GENERAL HOLIDAYS AS STATUTORY HOLIDAYS**

**MR LEE CHEUK-YAN** (in Cantonese): I move that the motion, as printed on the Agenda, be passed.

President, the motion I have put forward today on behalf of the Confederation of Trade Unions (CTU) proposes to progressively include all general holidays as paid statutory holidays. There is now a most unfair phenomenon in Hong Kong. There are two types of employees and two types of holidays, namely general holidays and statutory holidays. Some employees are entitled to general holidays, while others are entitled only to statutory holidays, also known as labour holidays. What is the numerical difference between these two types of holidays? President, at present, there are 17 general holidays a year. And, the number of statutory holidays is just 12. The difference is therefore five days.

President, the request of the CTU today is very simple: just give me five. What are the five days of holidays concerned? They include the three Easter Holidays, namely, Good Friday, the day following Good Friday and Easter Monday. The remaining two holidays are the first weekday after Christmas

Day and the Buddha's Birthday. We are asking for the inclusion of these five holidays as labour holidays. That is why I said, "Give me five." I very much hope that employees in Hong Kong can eventually receive equal treatment.

President, employees must be given some "breathing space" somehow. To begin with, while employees in Hong Kong must work especially long hours, the Government has already adopted the five-day working week arrangement. But ordinary employees must work more than five days a week. They must work six days. The Government requires its employees to work eight hours a day, but ordinary employees must work 10 to 12 hours a day and six days a week. Their working hours are very long. But all year long, they can have seven days of annual leave only. This is in very great contrast to civil servants. Therefore, President, we are just asking for one thing. Why can we not give all those hardworking wage earners some breathing space, more breathing space, during the year?

This is very important. President, we have been advocating family-friendly policies these days, about a proper balance between family life and work. However, all along, it has not been possible to strike such a balance in Hong Kong. Very often, the requirements of one's work take precedence over one's family life. General holidays are meant to be occasions on which wage earners can have a break together with their family members. The reason is that in the case of a working wife, for example, she and her children can enjoy the same holidays. When all the members of a family can enjoy the same holidays together, they will be able to have some breathing space. Therefore, I very much hope that the Government can really hear the wage earners' voice, and heed their aspiration to more holidays in Hong Kong.

President, what is the present situation? I estimate that 60% of the employees in Hong Kong are not entitled to general holidays. This means that the majority of employees in Hong Kong must go to work on the five general holidays mentioned above. This is most unfair to them. What are the occupations of such employees? They are usually engaged in the retail, catering, transportation, security, cleaning and services industries. President, one characteristic of these industries is that working hours are long, as long as 12 to 14 hours a day. Worse still, they are not entitled to the five days of general holidays mentioned above. There is thus a very serious disparity in holidays. There is not just a disparity in wages but also in holidays. Bank employees

work five days a week. And, which type of holidays are they entitled to? They are entitled to general holidays. President, I simply fail to understand why there should be such unfairness in Hong Kong, where employees are divided into two types. Why is it impossible to accord equal treatment to all?

Second, President, many people argue that holidays for employees will add to operating costs. But I must advise the Secretary that cost control is no longer the sole emphasis in society nowadays. Rather, we now also lay stress on productivity. Speaking of the emphasis on productivity in modern-day society, I must point out that a happy employee will always finish his tasks much more quickly. He will always be beaming, working at higher productivity. Frankly speaking, it should already be enough as long as employees can upgrade their productivity. What is the point of being so mean about giving them an extra holiday? When a holiday is approaching — I believe Members must themselves have been employees, and self-employed persons are even more miserable — people will have something to look forward to. They will look forward to the holiday, and they will turn lighter in mood. After all the un-winding during the holiday, they will be in a better mood, and their productivity will increase. In that case, even from the perspective of productivity, all costs can actually be recovered. Therefore, even from the perspective of competitiveness, Members should still support the motion proposed by me today.

Some may want me to describe the historical background of the whole issue. They may wonder why such a situation has emerged. Speaking of the historical background, I can actually tell Members that as early as 1967, the number of general holidays was already increased to 17. Statutory holidays were first designated in 1962, with six days a year initially. In 1977, there were 10 statutory holidays a year. In 1983, there were 11 days, and in 1999, there were 12 days. Members can thus observe that after the passage of more than 40 years, the numerical difference between these two types of holidays has not yet been narrowed. There is still a difference of five days. As early as 1967, there were 17 general holidays already. But even now, in 2008, there is still a numerical difference, a difference between 17 days and 12 days. How many years did it take to reduce the difference by one day? I have done some computations, and my finding is that it took as long as 16 years, from 1983 to 1999, to reduce the difference by one day. Since it took 16 years to reduce the difference by one day, are we supposed to wait 80 years before we can do away with the present difference of five days? President, is our society really so

backward? How can this Government do something like this to workers? Workers are so miserable. Why is it impossible for us to solve this problem as soon as possible?

President, the CTU has done a comparison of different countries in the world. According to the standards laid down by the International Labour Organization in 1973, annual leave should number at no less than three working weeks. But there is currently only seven days of annual leave in Hong Kong. Even when the 12 statutory holidays are taken into account, there will just be 19 days only, which is still far less than three working weeks. This is not to speak of the fact that we are just talking about annual leave. Therefore, if we look at the combined number of annual leave and statutory holidays in Hong Kong when reviewing Hong Kong people's right to holidays, we will see that Hong Kong people are very pitiable. The number of holidays they have is far smaller than those in advanced countries. There are some 30 days in Europe, 32 days in South Korea and 25 days in Japan.

Worldwide, Hong Kong's ranking is in the bottom one fifth of all the 103 countries. When it comes to its ranking regarding the length of working hours, Hong Kong ranks the eighth globally. Among countries noted for long working hours, Hong Kong ranks the fourth from the bottom in terms of the number of holidays. Since Hong Kong has already achieved a very advanced level of economic development, we should really compare ourselves with economically advanced countries, shouldn't we? We should really compare ourselves with OCED countries, shouldn't we? If we do so, we will notice that Hong Kong is lagging far behind them. If we do not do so, and if we compare ourselves with the whole world instead, we will also find that despite our advanced economic development, we are still Third World in terms of the number of holidays for employees. Is this fair to the employees in Hong Kong?

President, please allow me to read out aloud some words which I find very touching and appealing. I shall tell you who the speaker was when I have finished with the quotation. And, now I quote, "As a matter of fact, work pressure is also greatly affecting all walks of life in Hong Kong. Market changes and the social demand for ever better services have caused a gradual increase in work pressure on the majority of the employed population in recent

years. The impact on white-collar employees, in particular, has even been increased markedly without being noticed. .... The implementation of a five-day week will not only enable employees to have more time to spend with their families but will also boost consumption, thus producing positive impacts on economic development and the employment situation." President, I believe you can already guess that Donald TSANG was the speaker. When he introduced a five-day working week, he made those remarks. I find all these words very appealing.

Civil servants are now able to enjoy a five-day working week. I also agree that civil servants should enjoy a five-day working week. But just how many of the two to three million ordinary employees in Hong Kong can enjoy a five-day working week? Speaking of all those employees who cannot enjoy a five-day working week, I must say that we still owe them five general holidays. In Donald TSANG's words, giving them a holiday will enable them to spend more time with their families and boost consumption, thus producing positive impacts on economic development and the employment situation. A five-day working week will produce positive impacts. This is not to speak of the fact that what I am advocating is no big deal at all.

Some have advised me that I should instead fight for a five-day working week. This is also what I want to do, President. Frankly speaking, I want a five-day working week much more than anything else. If it is possible to fight for a five-day working week, I am prepared to withdraw my motion right away. I am prepared to exchange "give me five" for a five-day working week. However, President, I do understand that given the prevailing circumstances in Hong Kong, it will be more difficult to fight for a five-day working week. I have already settled for the second best. Mine is just a modest request for five more holidays a year. I am not asking for a five-day working week, which will mean 52 extra holidays a year. I am simply asking for five more holidays a year. But the answer is still negative.

President, I know only too well what the voting outcome will be. Since the Liberal Party is opposed to the motion, it will not be passed under the system of separate voting. I can also guess what the Government will say. It will not agree to take any immediate actions. That is why I simply do not know how many more years the wage earners in Hong Kong must still wait.

With these remarks, President, I hope that Members can voice out for the wage earners in Hong Kong as a matter of justice. Thank you, President.

**Mr LEE Cheuk-yan moved the following motion: (Translation)**

"That this Council urges the Government to amend the Employment Ordinance to progressively include all general holidays other than Sundays as paid statutory holidays."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr LEE Cheuk-yan's motion be passed.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Madam President, I wish to express my gratitude to Mr LEE Cheuk-yan for moving the motion entitled "Inclusion of general holidays as statutory holidays".

The SAR Government attaches very great importance to the rights and interests of the 3.1 million or so employees in Hong Kong, convinced that they have been making valuable contribution to our society and economy. The long-standing position of the Government is to increase and improve employees' rights and welfare in the light of Hong Kong's status of social and economic development and on the premise of striking a reasonable balance between the interest of both employers and employees. This policy principle is both very important and proven. Before responding to Mr LEE Cheuk-yan's motion, I wish to explain the difference between "general holidays" and "statutory holidays".

"General holidays" are designated under the General Holidays Ordinance (GHO), that is, Chapter 149 of the Laws of Hong Kong. According to section 2 of the GHO, a general holiday is a day which shall be kept as a holiday by all banks, educational establishments, public offices and government departments. There are currently 17 general holidays other than Sundays. Many employees do not have to work during "general holidays", but staff welfare is not the intent of the Ordinance.

On the other hand, "statutory holidays" are a form of holiday welfare to be enjoyed by all employees and provided by all employers under the Employment Ordinance (EO), that is, Chapter 57 of the Laws of Hong Kong. According to

section 39 of the EO, all employees are entitled to 12 statutory holidays a year. The EO also contains clear provisions on holiday pay and forbids any employer to pay wages in lieu of statutory holidays. In case an employer wants an employee to work on a statutory holiday, he must make arrangement for a substituted holiday. This can show that statutory holidays are meant as a form of employee welfare, and comprehensive provisions are therefore made in the Employment Ordinance.

The brief explanation I have offered indicates that "general holidays" and "statutory holidays" are different in terms of background and nature. So, we should not mix them up in our discussions.

The origin of statutory holidays can be traced back to the 1960s of the last century. In 1961, the then Legislative Council legislated for the first time on statutory holidays by enacting the Industrial Employment (Holidays with Pay and Sickness Allowance) Ordinance. This Ordinance, which came into effect in April 1962, required that all workers under industrial employment must be entitled to six holidays a year. The designated holidays roughly coincided with traditional Chinese festivals. The Ordinance was subsequently repealed in January 1974. Its provisions on statutory holidays were then incorporated into the EO, and all employees covered by the EO, whether under any industrial employment, were entitled to statutory holidays.

Later on, the Government amended the EO on several occasions. In 1977, the number of statutory holidays was increased to 10. In 1983, it was further increased to 11. And, in 1997, the Chief Executive in Council made a decision on designating the Labour Day on 1 May also as a statutory holiday with effect from 1999, and the relevant law was passed by the Provisional Legislative Council in the same year. Since then, the number of statutory holidays has stood at 12.

We can thus observe that since 1962, when the Government first legislated on granting statutory holidays to workers, the number of such holidays has been progressively increasing. The Government is of the view that under the existing EO, there is already a certain degree of protection for employees' rights and welfare, including their entitlement to statutory holidays (which number at 12 a year in total). It also maintains that the EO can strike a balance between the interests of employers and employees.

The information collected by us indicates that Hong Kong ranks fourth among the 13 places in the region in terms of the number of statutory holidays. We only lag behind South Korea (where the number is 14), Malaysia (where the number is also 14) and Thailand (where the number is 13). According to a report published by the International Labour Organization in 2005, only 17 out of the 65 countries covered in the survey have a larger number of statutory holidays than that in Hong Kong. The numbers of statutory holidays in advanced Western countries such as the United States, Canada, the United Kingdom, France, Belgium, Holland, Denmark, Finland, Sweden and New Zealand are all smaller than that in Hong Kong. Therefore, it can be said that in terms of the number of statutory holidays, Hong Kong is currently on a par with its neighbours and advanced Western countries.

I also wish to point out that the EO only sets down the basic rights of employees and the minimum welfare benefits to be provided by employers to employees under the law. We have all along encouraged employers to adopt the "people-based" best personnel management practice, and we have also encouraged employers to offer employment terms better than those set down in the EO through negotiations with their employees, such as more paid holidays. This will increase employees' sense of belonging and help build up teams with competitiveness.

Madam President, as I have pointed out, the rights of employees and the obligations of employers are already covered most comprehensively by the existing EO. This can keep pace with Hong Kong's status of social and economic development and strike a reasonable balance between the interests of both sides. At this stage, the Government does not intend to introduce any amendments.

In the following part of this motion debate, I shall listen to Members' valuable advice, and then make a detailed response. Thank you, Madam President.

**MR WONG KWOK-HING** (in Cantonese): Madam President, in recent years, society has been showing an increasing concern about family-friendly policies. "Family-friendly" actually carries a double meaning, referring to both the family and policy-friendliness. According to one definition, family policy constitutes the direction and conditions for formulating and reviewing various social and public policies, with the aim of promoting satisfactory family life; rather than being a unitary policy, family policy comprises a series of policies and measures

based on the well-being of the family. By now, many places in the world have started to attach importance to family-friendly policies. Some countries have even implemented various proactive measures to assist the family, such as subsidies for mothers, subsistence grants for small children and dependent children allowances. In some cases, enterprises are even encouraged to implement various family-friendly policies, such as the provision of child care services and flexible working hours. Some countries also promote family leave, so that employees can take paid leave every year to attend to their family affairs. For this reason, holidays are one important segment of family-friendly policies.

Madam President, what we now have is "one Hong Kong, two systems of holidays". This means that in Hong Kong, there are two types of holidays, namely general holidays and statutory holidays (also known as labour holidays). There are currently 12 statutory holidays in Hong Kong, namely, the first day of January, Lunar New Year's Day, the second day of Lunar New Year, the third day of Lunar New Year, Ching Ming Festival, Labour Day, Tuen Ng Festival, the day following the Chinese Mid-Autumn Festival, Chung Yeung Festival, Chinese Winter Solstice Festival or Christmas Day (at the option of the employer), Hong Kong Special Administrative Region Establishment Day and National Day.

As for "general holiday", it is defined under the law as "a day which shall be kept as a holiday by all banks, educational establishments, public offices and Government departments." For this reason, general holidays are commonly called "bank holidays" or "office holidays". Sundays aside, there are 17 general holidays in Hong Kong. The 12 "labour holidays" mentioned just now are also general holidays, and the remaining five general holidays are Good Friday, the day following Good Friday, Easter Monday, the Buddha's Birthday and the first weekday after Christmas Day. Since these holidays are meant for the general public, why should we exclude the 3.1 million workers who constitute the bulk of our workforce? I therefore cannot agree to the Secretary's remarks just now. I maintain that general holidays are labour welfare. One simply cannot argue, as the Secretary did a moment ago, that only the holidays set out in the Employment Ordinance, not any general holidays, are to be regarded as labour welfare. I totally disagree to such an argument.

Madam President, the origin of the two types of holidays in Hong Kong can be dated back to the 1950s, 1960s and 1970s, when our society relied basically on manufacturing industries. It was against such a background that

labour holidays were designated. Later on, in order to enable bank employees to enjoy holidays, bank holidays emerged. At the same time, as labour rights received increasing attention, labour holidays also emerged progressively. Some like to distinguish between the two types of holidays by calling them "blue-collar" holidays and "white-collar holidays". But such differentiation is in a way rather unfair. Are we supposed to say that the working classes should not enjoy as much rest time as the "white-collar" classes? Society has been progressing, and nowadays, our discussions must no longer be based on any differentiation between "blue-collar" workers and "white-collar" employees. Nor should our discussions continue to focus on why there are just 12 labour holidays but 17 general holidays. Honestly speaking, even 17 days are not enough for employees. Madam President, according to a report of the International Labour Organization, the total number of holidays for employees in advanced countries is about 30. However, in Hong Kong, there are just 19 holidays in total, and this is far below the standard. In terms of the number of holidays, Hong Kong ranks fourth from the bottom, just above Singapore, the Philippines and Mexico. The number of annual paid holidays for employees in Hong Kong is about 19, inclusive of the existing seven statutory holidays. These days, many people like to compare Hong Kong with London, so we may as well compare the two in terms of holidays. The number of statutory holidays in London is 24, which is greater than that in Hong Kong. As for our neighbours, in Korea, for example, the total number of statutory annual leave and statutory holidays is as great as 32.

Madam President, many employers from the commercial and industrial sector frequently comment that more paid holidays for employees will increase costs and adversely affect the business environment. But having studied the experience of other countries, I simply fail to see any justification for such an argument. Quite the contrary, in India, although there are as many as 60 statutory holidays, this country has been quite successful in attracting inward investments in recent years. I therefore think that some in the commercial and industrial sector are indeed over-worried.

The Secretary can probably note that in the name "Labour and Welfare Bureau", the word "labour" precedes "welfare". This can show, as always pointed out by the Secretary, that the Government attaches great weight to labour issues. But at present, workers cannot receive any equal treatment in respect of holidays. They are not treated fairly and cannot enjoy the 17 general holidays. Therefore, via the President, I wish to urge the Secretary to discharge his duty diligently and rectify this unreasonable situation for all workers in Hong Kong.

If he does not do so, he will fail to discharge his duty properly, and the name "Labour and Welfare Bureau" will be reduced to misnomer. I therefore hope that the Government can refrain from referring to the Employment Ordinance as an excuse. Instead, he should fight for the benefits of all workers in Hong Kong.

Since Hong Kong is often called a metropolis, how can we possibly apply such an outdated set of labour holiday criteria to its precious manpower resources? Thank you, Madam President.

**MR LAU CHIN-SHEK** (in Cantonese): President, I can recall that when I first switched from social movements to labour movements, my greatest concern was to fight for rest days for all employees in Hong Kong. We people engaged in labour movements always believe firmly that a worker's time should be, and must be, appropriately apportioned to enable him to meet his needs for rest, work, further studies and looking after his family. If a worker is required to work all day long and all the year round without any breaks, he will be fatigued, and his health and family will suffer. Not only this, his employer will also be affected, because an exhausted employee cannot possibly work with any high productivity, right?

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

Deputy President, before the 1970s, many workers in Hong Kong must work on virtually all the 365 days of a year, from day to night. Workers were not entitled to any rest days whatsoever under the law. At that time, the chairman of a certain chamber of commerce remarked, "Hong Kong is not endowed with any natural resources. We depend on workers' dedication and industry. If there are any rest days, workers will become 'lazy'. How can there be any competitiveness in that case?" Such a viewpoint was well-accepted in society at that time. As a matter of fact, this argument was invariably flaunted by the chamber of commerce whenever legislation on workers' annual leave, women's paid maternity leave and other labour issues were put forward. As a result, the enactment of legislation on workers' rest days was also hindered. We were strongly dissatisfied. We were just asking for four rest days a month — all with no pay, I must add. We hence thought that this chairman of the chamber of commerce would certainly be scared to death if we ever asked for

paid rest days. We therefore tried to learn more about this chairman. We subsequently found out that he would go to church every Sunday morning, for he was a devoted Christian. In the end, all of us in the Hong Kong Christian Industrial Committee decided to distribute leaflets outside the church on Sundays. The leaflet read more or less like this, "Chairman, you go to the Sunday service every week. But have you ever considered whether God is exclusive to you? Should employees not also go to church to worship God on Sundays?" Perhaps, this chairman somehow got the call by God, so his stance eventually softened. In 1970, the Government enacted a law, whereby workers were given at least four rest days a month. Subsequently, in 1976, the law was further amended to require that all employees employed on continuous contracts must be entitled to one rest day weekly.

Deputy President, the mission of enacting legislation on workers' rest days was thus accomplished. Over the past three decades or so, on rest day protection for employees, we have been following the direction of first fighting for the designation of the Labour Day on 1 May as a paid holiday for employees. Our second objective is to eliminate the inequality between "blue-collar" and "white-collar" employees in respect of statutory holidays. This is precisely embodied in Mr LEE Cheuk-yan's motion today, which asks for the progressive inclusion of general holidays as paid statutory holidays. Deputy President, after the passage of many years, the struggle for designating 1 May as a paid statutory holiday finally bore fruit in 1997, when my Private Members' Bill to this effect was passed by the Legislative Council. Workers' legitimate status and dignity are now given due recognition. This is certainly something very delightful and unforgettable in my long years of labour movement career. However, when it comes to the inclusion of all general holidays as paid statutory holidays, after more than 30 years since the 1970s, the number of paid statutory holidays enjoyed by employees has only increased from 10 a year in the 1970s to 12 a year in 1997 and thereafter. In contrast, there are 17 general holidays a year in addition to Sundays. I therefore think that in regard to paid statutory holidays, the Government's legislative progress has been much too slow. One can actually say that the progress has been totally unable to keep pace with Hong Kong's rapid economic progress, which is very disappointing indeed.

Deputy President, in the early 1970s, when there was no legislative provision on rest days, Hong Kong workers' working hours were almost the longest in the whole of Southeast Asia. At the time, some international media

even dismissed Hong Kong as a "sweatshop". More than 30 years down the line, Hong Kong is now a very advanced economy, and its labour legislation has also made progress in many other ways. However, according to the surveys of the International Labour Organization, Hong Kong still ranks among the top 10 economies recording the longest average working hours per week. And, over the past few years, some one quarter of the employees in Hong Kong must persistently work 55 hours a week, or nine hours a day for six days a week. This situation really calls for our self-examination.

In recent years, Chief Executive Donald TSANG has been actively pursuing the policy of a five-day week for civil servants. Apart from reducing the Government's administrative costs, this policy can also enable civil servants to have more rest time, more time for enjoying their family life and pursuing further studies. The Government has also stated its hope that this policy can encourage private-sector organizations to follow suit. I can observe over the past few years that generally speaking, the "five-day week" policy is a success, and it is good for civil servants to have an additional rest day. However, I do not know whether the Secretary can provide us with some concrete figures on encouraging private-sector organizations to follow suit. My observation is that very few private-sector organizations have followed this arrangement.

There are many ways to enable employees to strike a balance between rest time and working hours. Some examples are the enactment of legislation on working hours, which I have advocated for many years, and Mr LEE Cheuk-yan's present proposal on increasing the number of paid statutory holidays. Some 30 years ago, my trade union colleagues and I already advocated the inclusion of general holidays as paid statutory holidays. When I examined the wording of Mr LEE Cheuk-yan's motion today, I noticed that he is only asking for the progressive inclusion of all general holidays other than Sundays as paid statutory holidays. This is just a very modest request. I think that the Secretary should give serious consideration to this proposal.

With these remarks, Deputy President, I support Mr LEE Cheuk-yan's proposal. Thank you.

**MR LEUNG YIU-CHUNG** (in Cantonese): Deputy President, two months ago, when I was campaigning in the street, a man rushed up to me in obvious

dissatisfaction and said, "LEUNG Yiu-chung, you must say something for me in the Legislative Council." I asked him what he wanted me to say for him, and he replied that I must put forward a proposal on including general holidays as statutory holidays. I asked him for a reason. He told me that his wife was entitled to general holidays, but he could only enjoy statutory holidays. He went on to say that they thus could not work things out smoothly, so there were many disputes, and he was even criticized for failing to look after his family. I promised to put forward the proposal for him. I must therefore thank Mr LEE Cheuk-yan because his motion gives me an opportunity to tell all this to the Secretary today.

Deputy President, I think all the viewpoints presented by Mr LEE Cheuk-yan today are very important. As also pointed out by some Members just now, holidays are supposed to serve several purposes. First, they are meant to foster family harmony, for we have been talking so much about the need for parents to educate their children. However, if people must work very long hours, if they have no or just very few holidays, how can they educate their children? How can there be any family harmony? On this count, increasing the number of holidays will surely help.

Second, as Members all know, more rest will surely be good to one's health. The Government has been talking about the incessant increase in health care expenditure. If we are so myopic, if we insist on depriving workers and employees of more rest time for reasons of maintaining balanced labour relations, we will be very myopic indeed. Because such a viewpoint focuses only on the ability of employers to make more profits in the short run. But looking at the issue from the social perspective will lead us to a different situation. From the social perspective, if employees can enjoy more rest time, they will contract diseases less frequently, and this will reduce the Government's health care expenditure. This will in turn reduce public expenditure and taxpayers' burdens. Giving investors some sort of relief in this respect is also a form of balance. It is a pity, however, that the Secretary's remarks just now focused only on a balance in the short run, rather than striking a balance from the social perspective. I think this actually meaningless. He fails to look at the issue from the perspectives of the Government and society as a whole. In other words, his viewpoint is very myopic.

Third, I think that merging the two types of holidays will have a much more profound meaning to society. The present discrimination and inequality among employees will be eliminated. All along, people have thought that only "high-class" employees are entitled to general holidays, and those not so "high-class" or labourers can enjoy statutory holidays. We always say that there is no job which is too small, and that all jobs are equal in significance. What is the point of differentiation? Is this just a form of division or discrimination?

We do not aim only at family harmony and family-friendly policies. Rather, we also hope to foster social harmony and society-friendly policies. Why is uniformity considered impossible? From the perspective of striking a balance, I must point out that myopia is not advisable. What the Secretary said just now is seemingly true, seemingly true from the perspective of investors. But upon closer examination, we will see that his remarks are simply incorrect even from the perspective of investors. The reason is that social investment is ignored, and this is actually the biggest investment.

Deputy President, why do we advocate family harmony? Because many young people have gone astray, joining triad societies or giving up their studies, for example. We must hence employ many social workers, and we are even discussing the construction of a mega prison. All this will require the spending of social resources. If fewer young people go astray, it will be possible to reduce public expenditure. In that case, the profits tax on investors can also be reduced because society does not need to spend so much money.

The Secretary has been looking at the issue from the perspectives of workers and labour relations, but he as the Secretary for Labour and Welfare should not be so myopic. He must also consider other policy areas such as social welfare. He should consider the issue from the perspective of society as a whole. If he can look at the issue from wider perspectives, he will see that the kind of uniformity advocated by us will actually produce much greater and far-reaching effects. It is simply not true to say that LEE Cheuk-yan is greedy and insatiable, speaking only for workers and asking endlessly for benefits. We should not look at the issue from that angle.

One very important point is that if society can set an appropriate number of working hours and rest hours for workers, there will be very great positive

effects on productivity, and the burden on society will significantly lighten as a result. From this perspective, I fail to see why anyone should oppose Mr LEE Cheuk-yan's proposal.

Lastly, I wish to ask the Secretary one question. If he has time, he may give us an answer. Why does the Chief Executive put so much emphasis on a five-day week for civil servants? Why? What are the advantages and disadvantages? Why is it impossible for others to enjoy a five-day week while civil servants can already do so? Are civil servants more privileged than others? Is he saying that a five-day week for civil servants already more than suffices, and others must never be accorded the same treatment?

Deputy President, I so submit.

**MS LI FUNG-YING** (in Cantonese); Deputy President, the inclusion of general holidays as statutory holidays is no new issue to the labour sector. Even if we look only at the Federation of Hong Kong and Kowloon Labour Unions to which I belong, we will see that since its inception in the 1980s, it has been requesting the Government to review the system of paid holidays and narrow the disparity between general holidays and statutory holidays. We have been putting forward this request for some two decades, but regrettably, the British Hong Kong Administration before the reunification turned a deaf ear to our demand, and even after the reunification, the Government of the Special Administrative Region also refused to heed the demand of the labour sector.

The existence of general holidays and statutory holidays in Hong Kong is a legacy of history. The existence of these two different types of holidays is also marked by the clear brand of class distinction, evident in the fact that general holidays are commonly called "white-collar holidays" and statutory holidays "labour holidays". During Hong Kong's economic take-off in the 1960s and 1970s, while the laws of the colony designated general holidays for employees of government departments, public organizations, banks and educational establishments, they also designated statutory holidays to protect the rights of the working classes, so to speak, to make sure that lowly workers would not be over-exploited in the labour market. But such an arrangement in fact served to classify the working classes as non-members of the public.

Hong Kong has long since said goodbye to the age of "sweatshops", with the distinction between "white-collar workers" and "blue-collar workers" becoming increasingly blurred. Social values have also changed with the times, and we now attach greater importance to building up a fair and harmonious society. It is therefore only natural for us to include general holidays as statutory holidays, to merge these two types of holidays, so that all employees in the labour market can enjoy equal protection and rights under the law. There is no need to resort to any complicated theory to explain this point.

The law is meant to uphold fairness and justice, rather than safeguarding any privileges and splitting up society. If unequal treatment is found in the law, if certain employees are given 17 holidays while others are given only 12, and if no reasonable explanation is offered, "equality before the law" will be reduced to a mere falsehood. The reason is that the law itself is marked by a double standard. The statute which carries such a double standard is unfair, not only to those employees who are not entitled to general holidays but also to those employers whose trades are covered by the general holidays provision, because the law requires these employers to be more reasonable than other employers in their treatment of employees.

Deputy President, I must emphasize that I am not asking the Government to reduce the number of general holidays to achieve equality before the law. Apart from going against the trend of social development, this will also worsen the life of employees in Hong Kong, who are already battered by long working hours. This will do no good to Hong Kong as a whole.

Since July 2006, the Government has been phasing in a five-day week for government departments. At the time of launching the five-day week arrangement, the Secretary for the Civil Service said (and I quote), "We believe the initiative has brought about intangible benefits to staff, such as stress reduction; better work-life balance; more opportunities for sports, recreational and cultural activities; more time for self-development and voluntary and community work; and more harmonious family life." (End of quote). This can tell us that such benefits should not be exclusive to civil servants. They are the common aspiration of all employees in Hong Kong.

When marketing the five-day week arrangement, the Government emphasized that it would not enact any legislation mandating implementation by

private organizations. It said that private organizations would only be encouraged to do so. It is now May 2008, and all phases of implementing the five-day week arrangement have been completed. But how many private organizations have responded to the Government's appeal? Very few indeed. I understand why the Government does not want to legislate on mandatory implementation of the five-day week arrangement by private organizations. But as the champion of the five-day week arrangement and more rest time for employees, the Government must at least remove the distinction between general holidays and statutory holidays, so as to give more breathing space to those employees who cannot currently enjoy general holidays. The request is just meant to rectify a historical error and do justice to all those employees who are not entitled to general holidays. Deputy President, I must point out that when compared with the five-day week arrangement championed by the Government, this present request of the labour sector is already very restrained. If the Government refuses to respond favourably to even such a restrained request, it will be pointless to talk about social justice and social harmony.

Deputy President, I so submit.

**MISS CHAN YUEN-HAN** (in Cantonese): Deputy President, during the holiday just past, many families swarmed to Cheung Chau for the Bun Festival, bringing great business opportunities to the local economy. Some shop operators have disclosed that they each made a profit of \$40,000 to \$50,000 on that day, with some recording a 30% increase in business turnover.

Many families — husbands, wives and children — arrived at Cheung Chau early in the morning. They first toured leisurely around the island and then settled down at some good locations for watching the festive activities later on. Such scenes delighted me immensely. But many people have told me that they cannot have such enjoyment, that this is exclusive to those who are off on Saturdays or Sundays, and that people who are denied such opportunities may even have to work on Sundays. What I wish to point out is that if we are to enable members of a family to have fun together, and if we are to facilitate the implementation of family-friendly policies that even the Government champions, we must realize that the many festivals, such as the Buddha's Birthday, can actually provide the right opportunities. What I mean is that with all these festive holidays and activities, urban dwellers, who are so busy and under very

heavy pressure the rest of the time, can communicate more with their family members and make themselves happier.

But, sadly, the reality is just like that described by me. As a result, after long holidays, my office will often receive many complaints. The complainants invariably question why they cannot have such opportunities, why they do not have such entitlement, why they cannot enjoy holidays like others. The people I am talking about are the "blue-collar workers" the Government has in mind. They are denied any general holidays, and their working hours are often very long. I must of course add that while some middle-class people are theoretically entitled to the general holidays, they are unable to enjoy them in reality. As a matter of fact, such is the current situation in Hong Kong.

Therefore, if I am ever asked to state my position on holidays, I will certainly ask the Secretary to think about the sophistry he advanced just now. According to him, the Administration has formulated two ordinances, and since these are two different ordinances, nothing can be done. I think Secretary Matthew CHEUNG must have some policy considerations in mind, and only this can explain why he has advanced such illogical arguments. In such a busy city like Hong Kong, everybody yearns to have more rest time, more time to spend with their family members, more time to go out and have fun with their children and more time for activities that can foster family harmony. I believe that deep down his heart, the Secretary also has the same feeling.

The situation as such, the Government should really consider stepping over to our side, because it is only in this way can it possibly understand our points. If the Secretary keeps on emphasizing that only this or that is under the ambit of the Employment Ordinance, and that general holidays must be dealt with under another ordinance . . . . . If the Secretary continues to argue that way, the Government will never be able to answer people's aspiration. The public strongly hope that the Government can give them a helping hand, so that they can have more time to spend with their families.

Very often, we will wonder how a society can strike a balance between people's job commitments and family life. In foreign countries, this is called the maintenance of a work-life balance. This actually means striking a balance between the two in a modern-day society. I hope the Government can give some thoughts to this. How can it enable more families to enjoy themselves on

Cheung Chau? How can it enable more families to visit Lantau on the Buddha's Birthday? How can it enable more people to spend more time with their children, for example? If it can enable more people to do all this, there will be less discontent in society and in turn less family violence. I therefore hope that the Government can explore the matter.

There is another problem, one which is caused by the fact that people are constantly urged by social requirements to pursue further studies. When I was young, for example, I could only pursue studies after work. Many a time, I could do my revision during holidays only. I took many such courses, and I always had to take leave one or two days before an examination for revision. Holidays were very important to me at that time. Therefore, whether one can have any holidays will make a very big difference. Give the tempo of present-day society and the high demands put on us by society, the Government must consider all those people when dealing with the five general holidays in question. The Secretary is also aware that employees in the hotel industry wishing to pursue any further studies must do so after 11 pm, when they are off duty. Can the authorities give them more holidays and therefore more choices, so that they can make better arrangements for such important aspects as their studies, work and rest?

What is more, as a result of tense city life, we will easily develop health problems. Members should know only too well that more exercise and more leisure time — as in the case of "Brother Shek", who is looking at me from there, and who always sing and appreciate Cantonese Opera — will make us feel better. Am I correct, "Brother Shek"? I am of course correct. We will feel much more relaxed. But do we have any time for listening to Cantonese Opera? Do we have any time for workouts? No. Most people must hurry to work with some bread early in the morning. And, after work, they immediately go back home for a shower, and they must then prepare for tomorrow's work. Such is our situation in reality.

Honestly, Hong Kong people are really something. They all seem so "strong and tough", and they just keep things going all the time no matter what. And, for reasons unknown, the average lifespan of Hong Kong people is by no means short. But then, they do suffer from many diseases, as evidenced by their demand for health care services. The Government must really take this into account. If people can have more holidays, their quality of life will be

upgraded, in which case they will live more happily, and more healthily, for sure. Why doesn't the Government consider this point?

Secretary, after this meeting ..... I am very pleased to see that Members belonging to the Liberal Party are now coming into the Chamber to listen to my speech. Very often, the Government thinks that employers will suffer if they give their employees with more holidays. Deputy President, I can remember very well that in the 1970s, we once proposed to give an employee a day of rest after every seven days of work. At that time, many employers held the view that employers must not be given any holidays. But in the end, when the Government formulated a policy on this issue, it decided that it was wrong to deny employees of holidays the whole year round — I mean no holidays the whole year round, 365 days. The Government therefore actively proposed the idea of giving employees a day of rest after every seven days of work. I can still remember the advertisement in the 1970s — a hotel employee opening the taxi door for his guest; he was beaming all the time, as he would have a day of rest after working every seven days. That was why he was all smiles when he opened the taxi door. That was the advertisement we saw in the 1970s.

Even the government at that time, though faced with all those employers keen on making Hong Kong one of the so-called "Little Dragons", still had the courage to amend the legislative provisions on holidays. In contrast, just what the Secretary has been saying today? There are now 12 labour holidays and 17 general holidays, and the Government is still so adamant in its refusal to remove the five-day difference. It is simply wrong for it to do so. There is now a test before the Government, a test as to whether it has the courage to amend the provisions of the Employment Ordinance on labour holidays and general holidays. Even if it is willing to do so, it will just be moving slightly closer to the middle, a bit farther away from its bias in favour of the business sector. The reason is that currently, the Government is not taking the middle course; it is still biased in favour of the business sector.

If we ask people with a progressive mindset in the business sector, we will find that even these people are in support of giving more holidays to employees. They think that after holidays, their employees will be in very good shape, ready for the next day's work. Why does the Government still refuse to make

changes? Members have reacted very negatively to the Secretary's reply. Ms LI Fung-ying even quoted Denise YUE, saying that the whole society (*The buzzer sounded*) .....

**DEPUTY PRESIDENT** (in Cantonese): Time is up.

**MISS CHAN YUEN-HAN** (in Cantonese): ..... More holidays will make everybody happier.

Thank you.

**DR FERNANDO CHEUNG** (in Cantonese): Deputy President, I speak in support of Mr LEE Cheuk-yan's motion. His motion is very simple indeed, which highlights the holidays that are open to all of us. All wage earners must have rest days. Apart from the weekly rest day, they should also be granted holidays on festive or memorable days in order to have extra day offs.

In this connection, there are currently two different systems governing statutory holidays and labour holidays. While some wage earners only have statutory holidays, the rest of them only have general holidays. No one knows why there is a difference of five days between general and statutory holidays. Why workers alike are governed by two different holiday systems? Given that the holidays are provided for all wage earners at large, why would there be such a difference? This is hard to explain.

I learnt from the Secretary just now that Hong Kong's statutory holidays compare favourably with many advanced communities, which is true. On the whole, the number of statutory or general holidays in Hong Kong is, relatively speaking, not bad. However, we should also look at the overall situation of the labour market given that Hong Kong people almost rank first among the world in working hours. Let us look at some figures. The University of Hong Kong (HKU) conducted a survey in April this year, in which thousands of wage earners were interviewed. The findings showed that their weekly working hours is 49.6 hours on average, nearly 50 hours. Compared to other advanced countries, it is 37 hours in Italy, 38 hours in Belgium, 39 hours in the

Netherlands, 39 hours in Denmark, nearly 40 hours in Germany, and even the most frequently accused United Kingdom, which has all along been accused of the excessively long working hours, it is a mere 44.7 hours were recorded. Let us look at the situation of Hong Kong, where the number of working hours is nearly 50, which is indeed too long.

Worse still, a report compiled by the Census and Statistics Department in 2006 to study the employees' actual working time and condition also showed that, among some 2 million employees currently working in non-governmental organizations (NGOs), 7.2% are working more than 10 hours daily. How many people does this 7.2% stand for? It means there are some 176 000 wage earners working in NGOs. Furthermore, among some 2 million employees, 1% agreed to work more than six days a week. What is meant by more than six days? That is seven days. Deputy President, do not take this 1% lightly as it stands for some 23 000 people. In a society as advanced as Hong Kong, there are still some 20 000 people who have agreed with their employers to work more than six days a week.

Deputy President, I find this most unacceptable. Many colleagues mentioned the importance of the so-called "work-life balance" today, but the figures showed that Hong Kong people have actually become workaholics and work for excessively long hours, thereby suffering serious health impacts. In fact, according to the abovementioned survey conducted by the HKU in April this year, many wage earners indicated that overtime work had caused adverse physical and psychological impacts on them. Worse still, 62.4% is subject to constant overtime work without any overtime allowance, whereas 51.7% needs to work till very late at night. In view of these figures and the annual leave to which they are entitled during their service, it can be seen that our rest time is actually shorter than that of employees in other advanced countries.

According to the HKU survey, while all wage earners in Hong Kong are entitled to an annual leave of 19 days, those in other countries can have more than 20 days. Take a look at Hong Kong people's daily working hours and weekly working days, as well as the annual leave enjoyed by each labourer on the whole, all these figures show that Hong Kong people are overworking. We are workaholics with excessively long working hours. Therefore, what Mr

LEE Cheuk-yan has put forward is actually a very humble request, asking for uniformity in general holidays to avoid some wage earners enjoying more holidays than others. In fact, all of them are exhausted and overworked.

I know that some people are very concerned about the disastrous effect of applying such uniformity in holidays to foreign domestic helpers as well. Deputy President, I also have this problem because one of my children is disabled and has to stay home. Nonetheless, my domestic helper can still take her holidays. We are very busy, but we cannot be so selfish as to make our labourers over-exhaust themselves. Admittedly, it would be best if they do not take leave. One must, however, bear in mind that they are human beings too, and all labourers should enjoy the right to holidays and rest. Just as the case today, we must ensure that all labourer enjoy uniformity in holidays and would not be divided into two classes.

With these remarks, Deputy President, I support Mr LEE Cheuk-yan's motion.

**MR ANDREW LEUNG** (in Cantonese): Deputy President, "statutory holidays" are paid holidays designed to protect the employees. They are all festive holidays, such as the first three days of the Lunar New Year, Ching Ming Festival, Chung Yeung Festival, Tuen Ng Festival, the day following the Chinese Mid-Autumn Festival, the National Day on 1st October, the HKSAR Establishment day on 1st July, and the Labour Day on 1st May which the labour sector treasures. Every year, the Government will publish the statutory holidays of the following year in the Gazette. It can therefore be seen that the SAR Government attaches great importance to the paid statutory holidays enjoyed by employees. As employers, we have been granting employees the legally protected holidays in accordance with the law.

Today's motion seeks to include all general holidays as statutory holidays, thereby increasing the present 12 statutory holidays to 17 per year. Members from the labour sector said that employees of Hong Kong enjoy fewer holidays than other places. But is this true?

Apart from the 12 statutory holidays, Hong Kong's labour law also provides that employees who have been in employment under a continuous contract for not less than 12 months shall be entitled to paid annual leave of seven days. Also, the amount of paid leave will be calculated according to the length of service, which will increase progressively on a yearly basis to a maximum of 14 days. Therefore, even an employee in his first year of service can enjoy at least 19 holidays a year — I said "at least" 19 days but not "on average" 19 days as Dr Fernando CHEUNG said just now — whereas an employee with more than nine years of service may have up to 26 holidays a year.

Mr LEE Cheuk-yan quoted the report made by the International Labour Organization (ILO), in which 103 out of 192 countries around the world were selected for study. It set out the statutory holidays of 65 countries, with the exception of Hong Kong. When we compare these 65 countries, with the inclusion of Hong Kong, we will find that only 17 of them have more paid statutory holidays than Hong Kong. In the report, 13 Asian countries' number of statutory holidays and minimum annual leave were listed, and if Hong Kong is included for comparison, we will find that our 26 days is only second to South Korea's 32 days in the region, but far outnumbers the 18 days of our competitor, Singapore.

After reading the report released by the ILO in 2005 entitled "Working time laws: A global perspective", I discovered that while many countries use public holidays as statutory holidays, it is pointed out in the report that the number of holidays varies among them, but generally not exceeding 10 or 11 days.

The Liberal Party and I hold that the number of statutory holidays is not unchangeable. Rather, it has been increasing in Hong Kong in the past, from six days a year at the outset to 10 days in 1976. It was subsequently increased to 11 days in 1983, and then further increased to 12 days with the inclusion of the Labour Day on 1st May in 1999. Take the Labour Day as an example, I was an employer representative in the course of discussing the inclusion of this holiday, and through negotiations, a consensus was expeditiously reached with the employee representatives.

In Hong Kong, there is indeed a mechanism to deal with all employment-related matters, including the rights of labour, and for consulting both the employers and employees. Under this mechanism, the Labour Advisory Board (LAB) has a very important role to play.

It can therefore be seen that on the one hand, employers are not indifferent to employees' welfare matters, but are ready to hold discussions with them; and on the other hand, the LAB has proactively conducted timely reviews and followed up community aspirations for labour rights. This mechanism has been operating effectively, and serves the purpose of maintaining and even promoting harmonious labour relations.

Therefore, we should respect this good tradition of negotiation between employers and employees. For this reason, any discussion on increasing the number of statutory holidays should be conducted by the LAB for purpose of a consensus before putting into action.

Last of all, I wish to briefly talk about the implications on the overall economy of Hong Kong. Given that the majority of enterprises in Hong Kong are small and medium enterprises (SMEs), which account for 98%, many Hong Kong people are actually employees of SMEs. Hence, increasing the employees' holidays is indirectly raising the operating costs of the SMEs. The effect will be more direct on such service industries as retail, catering, entertainment and property management.

Members may not agree that the effect is that serious. But bearing in mind that service industries account for a very large proportion of Hong Kong's enterprises, so even minor changes will raise the operating costs of tens of thousands of small businesses. As a result, not only bistro cafes will increase their prices, even the bakeries will be forced to have their bread marked up by a dollar or so each. This will further aggravate the inflation problem. Owners of individual buildings may also have to employ an additional security guard. Can members of the public afford this? Being a responsible political party, the

Liberal Party considers it necessary to voice out in order to show Members the other side of this proposal. In the course of discussion, the interests and affordability of all parties must be balanced.

Deputy President, I so submit.

**MR FREDERICK FUNG** (in Cantonese): Deputy President, first of all, I am very grateful to Mr LEE Cheuk-yan for proposing this today's motion, which reminds us once again of the outdated and unfair treatment of our wage earners. Members may recall the verdict of a case made more than two years ago relating to the illegal acts of a contractor of the Food and Environmental Hygiene Department to withhold wages and benefits, in which the Magistrate pointed out that the labour law in Hong Kong lagged behind that of other countries. It sparked off widespread discussion in society. A senior government official immediately argued that the prevailing labour law was very comprehensive and sound, and there was no need for a review. Subsequently, the then Secretary gave a "more public relations-styled" remark, that a comprehensive review might take some time, and the most effective approach would be to review the loopholes of the ordinance concerned in the first place.

Unfortunately, a review of neither the labour law nor the loopholes of the ordinance concerned has yet to be conducted so far. Progress has yet to be made in any review. On the contrary, the Secretary or Permanent Secretary was often heard chanting high-sounding slogans on the authorities' active promotion of family-friendly policies and work-life balance. Whenever I raised questions about the implementation of the relevant policies, particularly those with an objective of catching up with the international practice, for instance, paternity leave, parental leave and five-day work week which the Hong Kong Association for Democracy and People's Livelihood (ADPL) has pursued for years (not to mention the our long-standing fight for legislation on minimum wage and standard working hours), the authorities always try to evade by giving various excuses, such as adversely affecting Hong Kong economy or undermining the flexibility and competitiveness of the SMEs. It could at best create the doomed-to-fail Wage Protection Movement to delay the legislative timetable. Both the so-called review of the labour law and the review of the loopholes of the relevant ordinance are nothing but empty talk.

Deputy President, the motion proposed by Mr LEE today is just a most humble and fundamental request for fairness. Our elementary workers do not enjoy any protection in working hours. They are working day and night, but still fail to feed their families. Worse still, there are 1 million people earning less than 50% of the median wage. Also, certain types of jobs, for instance service industries such as construction and catering, are subject to unfair treatment in having five days fewer of general holidays. It can therefore be seen that Hong Kong has not only implemented the policy of "one country, two systems", but also two systems for employees as well.

Deputy President, statutory holidays (commonly called "labour holidays") are day offs for all employees. Every year, the Government will announce the 12 days of statutory holidays of that year. As for general holidays (also called bank holidays or "white-collar holidays"), they are marked red on the calendar. They may coincide with the statutory holidays, except for five extra holidays on Easter, the Buddha's Birthday and Christmas. While most office workers enjoy these holidays, the abovementioned elementary workers and those working in the service industries, like construction and catering, do not enjoy these so-called extra holidays. This strange phenomenon certainly has a historical cause that could be traced back to the colonial era. And yet, after the reunification, should we not rectify the situation to enable all Hong Kong wage earners to enjoy fair treatment in respect of holidays, be they "blue-collars" or "white-collars", professionals or ordinary workers?

According to the findings of the ILO, the statutory annual leave of Hong Kong employees is only seven days, which is much fewer than that of similar economies. So do other holidays enjoyed by our employees. Take maternity leave as an example, pregnant employees in the United Kingdom enjoy 26 weeks of paid maternity leave. While the ILO Maternity Protection Convention recommended that female employees should enjoy no less than 14 weeks of maternity leave, it is only 10 weeks in Hong Kong. Neither is there paternity leave, parental leave nor training leave. If we wish to build up a family-friendly working environment, how can we turn a blind eye to this situation or deprive the employees of their right to enjoy these holidays?

Deputy President, such phenomenon of "long working hours and few holidays" has seriously affected the physical health and family life of Hong Kong people. Members may still remember the recent consultation document on health care reform, which mentioned the modern urban lifestyle and stated that

the increasing demand for medical services was attributable to the long working hours and few holidays. I wish to stress that it is precisely because people are drowned by work, lacking rest and exercise and having no family life that resulted in the growth of physical and psychological problems. This is actually a time-bomb of society. Since prevention is better than cure, we are actually putting the cart before the horse if only treatment and financing are discussed to the neglect of how a healthy living and working environment can be fostered. For this reason, health care reform by nature should not be dealt with independently of the labour policy. The mindset of the Government should change from focusing primarily on the interests of the employers to working for the physical well-being and balanced life of Hong Kong people. Only by reviewing the existing arrangements of holidays and working hours can we relieve the pressure arising from the growing public demand for medical care in the future.

Deputy President, while the debate here is so hard to see our gums bleeding, it is all about a humble wish to secure for the elementary workers five days of holidays to which they are entitled. Secretary, do you get this? Secretary, is it the voice of workers or businessmen that is pounding in your ears? The ADPL hopes that this motion is just the beginning, which will immediately be followed by a comprehensive review of the labour law and the relevant findings.

Deputy President, I so submit.

**MR TOMMY CHEUNG** (in Cantonese): Deputy President, today I am speaking on behalf of the catering industry, and the position of the Liberal Party was stated in the speech made by Mr Andrew LEUNG earlier.

As we all know, the catering industry mainly observes the labour holidays. I have asked some members of the trade of the possible effect of the passage of today's motion, which will give all employees five more days of holidays a year. Calculating on the basis of the 200 000 people engaging in the industry, and assuming that employees ranging from chefs to waiters and even cleaning workers are earning \$400 daily, they found that the salary cost will increase by \$400 million a year.

Is \$400 million a trivial sum compared to our \$70 billion business turnover? Members may consider it trivial at first glance. But the fact is that

half of the industry is in the red, whereas the other profit-making half is only able to make a single-digit profit in general. On the whole, the catering industry can at best earn as much as a few billion dollars a year. Given that the majority of the 10 000-odd licensed food premises are small and medium enterprises (SMEs) with a low turnover, particularly those of family-type operation, business has become increasingly difficult.

Members may recall that after the introduction of the Mandatory Provident Fund (MPF) in December 2000, employers were required to make an additional contribution at 5% of the employees' salaries to the MPF on the condition that the contracts should remain unchanged. As a result, an additional \$20 billion had been extracted from the market each year, which had actually dealt a serious blow to the SMEs and the catering industry. Many food premises could stand no more, and they simply wound up their businesses in Hong Kong and moved their operations northward to the Mainland.

However, Members representing the labour sector have turned a blind eye to this situation. Again, they proposed amendments against the move to use the MPF contribution to offset the long service payments. And recently, they have requested to legislate for minimum wage and maximum working hours. These are downright unreasonable requests which may cause serious misunderstandings about Hong Kong employees being seriously exploited, and that improvements are urgently needed.

Admittedly, Hong Kong's catering industry has comparatively longer working hours, and workers are required to work even on holidays, Saturdays and Sundays. Nonetheless, the wage level is comparatively higher. Dish-washing workers generally earn \$5,000 to \$6,000 a month in consideration of their long working hours.

Furthermore, lest we forget, the operating cost in Hong Kong has been rising, and in particular rentals and wages have been rising due to market effect over the past few years. Worse still, the implementation of certain tough and chaotic policies by the Secretary for Food and Health, Dr York CHOW, has resulted in price hikes in live chickens, live fish, live pigs and all kinds of non-staple food. The hastily introduced food nutrition labelling scheme of late will definitely trigger another wave of commodity price hikes.

The tremendous pressure faced by the catering industry today is beyond our imagination. And yet, Mr LEE Cheuk-yan still continued to demand better welfare for labour, bit by bit. I am worried that the passage of today's motion would be followed by another request requiring the employers to follow the practice of a particular overseas country, whereby employees working on statutory holidays will receive double or triple pay as compensation.

Members may say that I am over worried. However, lessons from history remind me that Mr LEE Cheuk-yan's demands are unlimited. His proposed legislative amendments, though some have yet to be endorsed, only protect labour welfare but not benefit productivity. How terrifying it was for the catering industry to hear that, worried about the development of Hong Kong into a welfare society. I wonder when Legislative Council Members from the labour sector will secure enough votes to force through their proposed legislative amendments. If the situation continues, both local and foreign investors will soon be scared off and dare not make investments here anymore, thereby significantly reducing the job opportunities.

In fact, the aspiration expressed by Mr LEE Cheuk-yan today is a demand made out of context. He focused on the statutory holidays so as to draw people's attention away from the annual leave to which an employee is entitled according to the existing labour law in addition to the labour holidays. All these add up to a total of at least 19 days, which is one day more than our neighbouring country Singapore of a similar social background and even outnumbers such advanced countries as Canada and Japan, where there are 18 days and 10 days respectively.

What is more, paid annual leave will increase with the length of service, from seven days to 14 days. Therefore, the total amount is actually on a par with many Western developed countries, for instance, the Netherlands (20 days), the Switzerland (20 days) and the United Kingdom (24 days).

Furthermore, there is also maternity leave in Hong Kong, which is granted in terms of weeks but not days, lasting for 10 weeks. Not many countries observe such leave. Hence, the treatment received by labour in Hong Kong, though not the best, is nonetheless pretty good.

In fact, the number of labour holidays has gradually increased with the times. After it was increased from six days to 10 days in 1976, it was subsequently raised to 11 days in 1983 and then further to 12 days in 1999.

Will it not be too greedy to ask for a further five-day increase in labour holidays through this motion?

Let me revisit an old issue. Perhaps Mr LEE Cheuk-yan should ask someone to provide him with the necessary capital for the operation of a food premise where the employees will be treated in the same way as proposed by him. For instance, they can enjoy general holidays and the protection of minimum wage and maximum working hours, and that the MPF will not be offset against long service payments. I wonder how long his food premise could survive. Provided that it can operate for eight to 10 years, I will vote for your motions in the future.

I hope Members will understand that it is all too easy to make empty talk and be generous at the expense of others. Should your remarks cause damages to the business environment and its competitiveness, scare away investors and render the workers jobless, will you be able to find another job for them?

Deputy President, I so submit.

**MR ANDREW CHENG** (in Cantonese): Madam President, I rise to speak in support of Mr LEE Cheuk-yan's motion on including general holidays as statutory holidays.

Having listened to Mr Tommy CHEUNG's speech, I must say that I find his remarks most heartrending. I believe many people in the commercial and industrial sector may not necessarily share his views. I believe that since working hours are so long in Hong Kong, many people in the commercial and industrial sector will probably share our views, agreeing that legislation on working hours and a uniform system of holidays should be considered. He mentioned many points in response to Mr LEE Cheuk-yan's remarks, and I suppose Mr LEE Cheuk-yan will respond to those points one by one. But still, I just wonder why he should have used words such as "bit by bit", "low productivity" and "greedy". Well, if we ever aspire to any ideal and a harmonious society ..... Actually, many people in the labour sector and I, as the Democratic Party's labour spokesman ..... In many cases, people are both "employees" in one role and "employers" in another. I hope Mr Tommy CHEUNG can refrain from going to the extreme.

Deputy President, in Hong Kong, as pointed out by Members, the five-day week arrangement implemented by the Government also follows the same direction as that proposed by the motion, that is, the direction of enabling people to strike a balance between work and rest. Earlier on, an organization called "Community Business" conducted an opinion poll, in which employees were asked about the ratio of work to rest they had in mind. The respondents generally replied that ideally, 60% of their time should be devoted to work and 40% to rest. But, in reality, the ratio for most employees is 8:2. This can show that there is an imbalance between work and rest, and this will make many employees susceptible to low mood, tension and various psychological problems. According to a survey in 2005, the incidence of depression among adults in Hong Kong was 8.3%. It was projected at that time that some 400 000 people suffered from varying degrees of depression, an increase of 400% when compared with the figure 20 years ago, in the 1980s. The survey also pointed out that if a depression patient did not receive any proper treatment, his or her productivity would be greatly reduced. In money terms, as pointed out by the survey, the average annual financial loss associated with each depression patient in the workforce was \$40,000. In other words, the total financial loss in 2005 could be as much as \$10.4 billion. These statistics are not fabricated by us, Deputy President. Rather, they came from some psychologists. In brief, our society must pay a high price for the tense working environment and fast tempo of life in Hong Kong.

For this reason, Deputy President, I think it is really necessary for us to progressively include all general holidays as statutory holidays. As a matter of fact, this will not only ease the pressure on employees and improve their quality of life but also make all "red" holidays literally general holidays for all. It is necessary to do so because when general holidays were first designated in 1947, it was specified that a general holiday "shall be kept as a holiday by all banks, educational establishments, public offices and Government departments". This means that general holidays are not literally holidays for all; only a minority of employees are entitled to such protection and benefit.

General holidays were then also commonly referred to as "bank holidays" because at that time, only "white-collar" employees could enjoy these holidays. And, statutory holidays were designated as late as after the 1967 riots, when the colonial administration started to improve the rights of the grassroots. Since

most were "blue-collar" workers at that time, these holidays came to be known as labour holidays.

According to convention, "white-collar" employees are entitled to "bank holidays", and "blue-collar" workers are entitled to labour holidays only. May I ask the Secretary whether there should still be such a distinction in the 21st century now? What is the reason for giving so many "general" holidays to all those non-traditional "white-collar" workers? Since these holidays are called "general holidays", the masses, the general public and all employees should also be entitled to them. There should be no distinction between "blue-collar" workers and "white-collar" workers, between bank holidays and labour holidays and between "red" holidays and "white" holidays. Sometimes, we simply cannot tell which holidays we are entitled to.

I therefore hope that when dealing with this issue, the Secretary can refrain from listening only to one side. Mr Tommy CHEUNG obviously spoke only for the commercial and industrial sector just now, and his remarks were far too extreme and unreasonable, because we are not asking the SAR Government to move towards welfarism. If Members really think that the number of our holidays has already caught up with, or even surpassed, those in Britain and the United States — during discussions on the issue of holidays, comparison with such countries is often made — when we discuss this issue, some will invariably argue that employees in the United States and Europe cannot enjoy as many holidays as we can. But, strangely, such comparison is never made during discussions on universal suffrage.

Another point is that workers in Europe and the United States are provided with many benefits which are denied to their counterparts in Hong Kong. Collective bargaining and a minimum wage level are two examples. Why do they not compare Hong Kong with them in these respects? I believe if it is really true that there are already many holidays in Hong Kong, the labour sector will certainly not be so "greedy", as described by Mr Tommy CHEUNG. Members should be fair and frank in the discussions. They should look at the rest of the world, just to find out how many rest days one should need after working for a certain period and see how many *bona fide* general holidays in a year one should enjoy. We can now enjoy many holidays, but does this mean that we should refrain from dealing with a problem left over by history?

We are very lucky today, as this meeting is probably going to end at 2.30 pm. But I believe many Members do often have to work overtime. Some of them may even suffer from depression. "The class will be dismissed" early today, and this in a way can show our determination to set a good example. I hope the Secretary can realize the importance of this topic.

With these remarks, Deputy President, I support the motion.

**DEPUTY PRESIDENT** (in Cantonese): Time is up. Does any other Member wish to speak?

**DR LUI MING-WAH** (in Cantonese): Deputy President, the motion entitled "Inclusion of general holidays as statutory holidays" moved by Mr LEE Cheuk-yan today indeed sounds very lofty, so he can pose himself as a champion of workers' rights and interests in this Chamber without incurring any costs. But this topic is not a new one.

I agree that more holidays will bring more benefits to the working class. With more holidays, workers can have more rest and spend more time with their families, thus fostering family harmony. Nevertheless, Members must not forget that the working class earn their reward basically by physical labour. When they go on holiday, society's productivity will drop and their employers' production costs will rise, thus directly reducing the market competitiveness of their products. More importantly, the interests of the working class will also be adversely affected in the long run. The reason is that a company devoid of competitiveness must cease operation, and the number of posts will thus decrease.

However, if their only purpose of asking for more statutory holidays is just to improve their quality of life, the working class may actually consider the idea of taking no-pay leave. With this arrangement, employers may employ temporary workers as stand-ins, so as to maintain operation and production. I believe employers may then consider such an arrangement.

Earlier on, some Members questioned why the five-day week arrangement should be possible with the Civil Service but not private enterprises. I have already explained the reaction of private enterprises. And, I also hope that

Members can realize that the SAR Government is just like the manager of society. The implementation of a five-day week does not require any costs because Hong Kong people are responsible for footing the bill in the end. If the Government cannot make ends meet, it can raise its revenue by increasing taxes or tax rates. I believe Members should still remember what happened during the recession a few years ago. But can this be the case with employers? Of course not. In that case, we do not have any right to increase employers' operating costs either, because in the long run, society's interests will be adversely affected. Thank you, Deputy President.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, yesterday, I happened to read a prose passage entitled "Wild Lily", which describes the "division of uniforms into three different colours and catering standards into five classes" for different levels of communists in Yan'an. According to WANG Shiwei, this cannot be justified, for they should all uphold egalitarianism. As expected, he was subsequently executed, because he exposed the hypocrisy of those people preaching one thing, but doing another. What is happening in this Chamber today is exactly the same — it is believed that different people should have different entitlements to human rights and the right to rest, depending on who they are. It is still believed that those who work with their brains should rule and those who work with their brawn be ruled. But this is a very feudal kind of mentality. The problem now is not about "to rule" or "to be ruled", though. It is now about "general holidays for those who work with their brains but not those who work with their brawn". The reason is that while office workers can enjoy the so-called general holidays, many of those who are denied such an entitlement are people having to work with their brawn. It seems that this legislature does not see anything wrong with this. Why? The main reason is related to costs.

I once heard Mr Tommy CHEUNG challenge Mr LEE Cheuk-yan to operate a bistro cafe, saying that he would say uncle if Mr LEE could manage. I do not quite know what Tommy CHEUNG had in mind. I myself often eat at bistro cafes, and I always like to ask their proprietors how their businesses are going. On one occasion, when I did so again, the proprietor told me, "The Government is such an 'asshole'. It simply watches the landlord increase the

rent with folded arms. The rate of increase is at least 50%, you know. But I just can't move the internal fittings elsewhere when I leave." Deputy President, I am just quoting his exact words. He went on to say, "What kind of government is this one? Water charges, electricity tariffs ..... It is slightly better with water charges. But then, the sewage charge has gone up again, and it is really exorbitant. Electricity and town gas charges are all very high. This is not to speak of the recent activities of 'frying' beef and pork." Puzzled, I asked him, "What do you mean by 'frying' beef and pork? Aren't you supposed to fry this and this every day?" He replied, "By 'frying', I mean the speculative activities regarding beef and pork. All these activities have boosted the operating costs of bistro cafes incessantly." One proprietor even cursed the Government, saying, "I simply don't want to carry on. Mr LEUNG, please say something for me and ask the Government not to do so anymore." He even said, "Please ask the Government to stop being such an 'asshole'." I am only quoting his exact words. Actually, he did not .....

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please mind your language.

**MR LEUNG KWOK-HUNG** (in Cantonese): I have just been quoting their words. They are usually coarse in their language. I always tell them that I am truly very saddened by what has been happening to them. The proprietor I have mentioned said, "All my employees have been working for me for eight to 10 years. I don't want them to suffer. But if the situation continues, I will have no alternative but to cut their wages or even dismiss them. I may have to hire some new arrival women from the Mainland to work for me. The wages of my old employees are simply too high. They each get \$7,000 a month. That's too high. It must be reduced to \$5,000."

All statistics show that the soaring operating costs nowadays are entirely due to rising land prices and rents. The Government cannot stop public utility operators from increasing charges. But people instead put all the blame on workers, arguing that they must not be given five more holidays a year, because this is not good to the Hong Kong economy. Why does the Government not examine the rises in property prices? It simply answers that everything must be left to the market. Workers think that such conditions of work are not right because there are two different kinds of treatment. However, people simply

reply that nothing can be done, as this has been the practice for a very long time. Truly, when I was small, Sunday was not a rest day for employees. That was indeed the case in the past, but the practice was subsequently changed.

(THE PRESIDENT resumed the Chair)

Therefore, what then is the motion today all about? It is all about the position that the majority of the 3 million-strong workforce must not be entitled to the holidays enjoyed by others. We should be talking about equality, and there are indeed material conditions for the realization of such equality. But the Government does not agree to accord such treatment to them. What is the point of any further discussions?

When it comes to minimum wage, people will again argue that a minimum wage level will plunge Hong Kong into disaster. However, other economies with minimum wage levels have not regressed. There is also a minimum wage level in the Mainland, but why is the economy there burgeoning all the time? What can be said is that whenever this legislature discusses any topics that may benefit the grassroots, however trivial such benefits may be, a hundred or even a thousand specious arguments and clichés will be advanced to block such attempts.

Honourable Members, the Labour Day on 1 May was not a general holiday in the past. Now that Hong Kong is reunited with China, it is designated as a general holiday. Why is there no opposition to this from the business sector? Why does no one argue that the economy of Hong Kong will go bankrupt? The simple answer is that this will not happen at all. The Buddha's Birthday is also a holiday ..... The designation of more holidays will improve the life of workers, but now, the Government simply tells those who earn their living with wrenches, "Sorry, we can't give you more holidays." It also tells those who earn their living with spikes, "You don't do any clerical work with pens, so there will be no additional holidays for you either." Should we discriminate against them like that? Actually, those labourers who toil and sweat ..... I was on the side of bar-benders when they went on strike. LEE Cheuk-yan made an indictment for them at that time, "Without these construction workers (I believe the construction of this very building also required

bar-bending), would it have been possible to erect this building?" But bar-benders cannot enjoy the same holidays as ours, while the government officials present here are able to do so. Is this fair?

The point here is therefore very simple. Whatever we are talking about, be it a minimum wage level, the repeal of the right to collective bargaining or even LEE Cheuk-yan's request for several more holidays, there are bound to be people who will say, "Holidays will make workers lazy. But you still claim that this can improve their quality of life. How can you argue in this way?" What kind of society has ours become? If our society has erred, someone in this legislature must somehow tell the whole society that there is an error. Unfortunately, however, many Members instead render their support for discrimination against labourers, against the most disadvantaged of the disadvantaged. *(The buzzer sounded)* ..... This is not right.

**PRESIDENT** (in Cantonese): Honourable Members, although I was not in the Chamber just now, I could still hear the Deputy President's reminder to Mr LEUNG Kwok-hung. I also wish to make it very clear that all Members must avoid the use of any foul language in their speeches. Members all know that the proceedings of our meeting are broadcast live on television, and many people are watching. Therefore, I hope Members can be careful with their diction, even when they are quoting others' words. This is a well-intentioned reminder.

**MR MARTIN LEE** (in Cantonese): Madam President, I believe many Members would not have expected me to speak. Surprisingly, I now rise to speak on the motion. The reason is that as I listened on, I increasingly sensed that something must have gone wrong. Why are Members so sharply divided on this issue?

Has it ever occurred to Members that whether one is an employer or an employee is actually all a fact of destiny? If a person's father happens to be a rich employer, he will probably learn how to run a business from his father and becomes an employer himself. If a person comes from a poor family, he will often end up being a worker. That being the case, why do people think that workers' welfare should be such a big deal anyway? Why should they speak in such a way as though giving workers a few more holidays would surely result in company closure? As rightly asked by our Honourable "Long Hair", will the situation really be so serious? Rent increases will produce greater impacts,

right? Therefore, why do we not look at the issue from a positive perspective? When workers have several more holidays, they will be in better shape and turn more enterprising in their work. Employers will ultimately get all the benefits. Besides, if workers are in good health — as pointed out by Members from the labour sector just now, even hiking and taking a stroll can make one healthy — they will take sick leave less often. Who will benefit ultimately? Employers again.

Why do we not look at the issue from this perspective? Why do we not listen to our State leaders' advice on building a harmonious society? What the point of all the confrontation on this issue? Madam President, I have come to the end of my patience, so I must rise to speak.

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

**MR ALBERT CHAN** (in Cantonese): President, time really flies, and it has already been some 20 years ago since I returned from Canada after graduation. At that time, when I noticed the system of holidays in Hong Kong, I was greatly surprised because I had lived abroad for quite some time, and especially in Canada, all statutory holidays formally designated by the government were paid holidays. But then I saw the very morbid situation in Hong Kong — in most cases, if the working-class people in Hong Kong, especially blue-collar workers and the poor masses earning hourly wages, wanted to enjoy the "red" holidays, that is, the holidays designated by the Government under the law, they would receive no pay. I found this unacceptable, and I was greatly surprised. I felt that Hong Kong and also its social institutions were marked by discrimination against the hard-toiling masses. I told myself that since Hong Kong was a British colony, it was not surprising that the colonial administration tried to curry favour with the wealthier classes or the petty bourgeoisie and offered them more advantages. I thought that such political discrimination was understandable, though it was certainly the undesirable legacy of history.

However, now, 10 years after the reunification, the Hong Kong Special Administrative Region of our People's Republic of China still discriminates against the working class. This is certainly an unforgivable sin, because even the highest leader who founded the People's Republic of China, MAO Zedong,

once remarked, to this effect, "The people, only the working-class people, are the true masters of the country." In spite of this, our SAR Government still discriminates against the true masters of the country. Does the SAR Government think that the hard-toiling masses and working class in Hong Kong are not the people of China? Is it saying that the hard-toiling masses and working class in Hong Kong should deserve such discrimination? Many Members in this Chamber, especially those representing the commercial and industrial sector, have repeatedly opposed requests for the abolition of such discrimination. I honestly hope that the next time they meet with leaders of the Central Authorities in Beijing, they will have the courage to advise them to also divide holidays in the Mainland into general holidays and labour holidays. I just cannot wait to see the severe dressing-down they would be given by leaders of the Central Authorities. These Members should stop swaggering around in Hong Kong. If they ever have any guts, they should speak equally "righteously" before leaders of the Central Authorities, requesting them to put their advice into practice in the Mainland, so as to discriminate against the billion or so hard-toiling masses there.

Therefore, President, when it comes to this issue, all talks will be nonsense if we do not look at it from the perspective of discrimination. Those who talk about how workers will become lazy are actually full of discrimination against the lower strata of society. Speaking of general holidays, why should there be paid holidays only for the 160 000 civil servants, white-collar workers, professionals and all those who work in Central? Why should bank employees also enjoy the same entitlement? Why can't factory workers, physical labourers, blue-collar employees and cleaning workers also enjoy these holidays with pay? If this is not discrimination, what else can it be, Secretary? May I ask those Members who oppose this motion this very same question? Should anyone think that the inclusion of general holidays as paid holidays will make people lazy, he should really ask the Government, the 160 000 civil servants and all white-collar employees to cease enjoying any paid general holidays. They must be consistent in their words, deeds, positions, perspectives and policies. They must not preach one thing but do another.

I therefore hope that the Secretary can take a real look at this issue. Starting from last year, the Hong Kong Government has been taking steps in response to central leaders' calls for building a harmonious society. But with discrimination and differences, there will be no harmony. All people in Hong

Kong have the same day of holiday, but while half of them still receive pay for the holiday, the other half, the other half belonging to the lower social strata or earning lower incomes, are not given any pay. The lower one's income level is, the smaller one's entitlement to paid holidays will be. Is this fair? This is discrimination on top of discrimination, further exploitation and oppression on top of oppression. The only result is that low-income earners will feel outraged at the sight of any "red" holidays in the calendar. Besides, since high-income earners and those having an up-class job can enjoy "red" holidays with pay, such a system of holidays will only create class hatred and confrontation.

Therefore, if the Government still insists on refusing to let them enjoy paid general holidays, I must advise it to abolish all general holidays and review all labour holidays, so as to find out how many common paid holidays can be given to all Hong Kong people. What is more, it must consult the "rich men's party" and those Members who oppose the motion, with a view to re-designating paid labour holidays and according equal treatment to all Hong Kong people, rather than depriving workers of paid general holidays while allowing other people to enjoy these holidays with pay. To put it crudely, I would say that civil servants are just trying to rally all the benefits to themselves, because all of them are entitled to paid general holidays. The fallacy of the system will surely arouse the strong discontent of the broad masses of workers. I call upon the hard-toiling masses in Hong Kong to follow the voting result today very closely, so as to find out which Members and political parties vote against the motion today.

**MS AUDREY EU** (in Cantonese): President, on behalf of the Civic Party, and also in my personal capacity, I rise to speak in support of Mr LEE Cheuk-yan's motion today.

The motion today is actually very simple, so I think I may read it aloud here: That this Council urges the Government to amend the Employment Ordinance to progressively include all general holidays other than Sundays as paid statutory holidays. President, Mr LEE has deliberately added the word "progressively" to the motion. This shows that he wants to make his motion a very mild one. There is not even a timeframe, and everything is to be done stage by stage, in a gradual and orderly manner. This reminds me of

Articles 45 and 68 of the Basic Law and all the talk about implementing universal suffrage according to the principle of gradual and orderly progress and in the light of the actual situation.

This is a very mild motion which is perfectly in line with people's aspiration. But I am very surprised, and I just do not know why the Government still refuses to express any goodwill. Like Mr Albert CHAN, I also want to see whether the motion can be passed today.

President, I have talked about this topic several times before, and I also think that it is appropriate to discuss it yet again. A journalist once asked me, "Now that there is already a timeframe for implementing universal suffrage, do you think that democracy and universal suffrage are longer any topics on the agenda?" I replied in the negative, adding that practically everything in our daily life was related to democracy. If we really want to realize the "people-based" principle and truly meet the people's demands, every aspect of our daily life can be raised for discussion. This motion topic is one such issue, President.

Our society is supposed to treat all social strata fairly and justly, right? The designation of holidays is a very simple matter, but still, why do "white-collar" workers have five more holidays than "blue-collar" workers? To begin with, these two types of workers already receive different levels of pay. Their work, the qualifications required of them and their levels of pay are certainly different. But we are now talking about holidays, general holidays. Holidays should be something very basic.

President, why do people need holidays? The answer has nothing to do with laziness. Rather, all is because people must have holidays. All people need holidays, whether we are talking about their health, family harmony and even working efficiency. The jobs of "blue-collar" workers are more physically demanding, so they may need even more holidays. For all these reasons, why do people still think that it is so very difficult to tackle this issue, to tell what is right and what is wrong?

President, according a study report published by the International Labour Organization in 2003 which covered 103 countries and places in the world, employees in Hong Kong are only entitled to seven days of annual leave a year.

Even when the 12 statutory holidays are added, there are only 19 holidays a year. Among all the 103 countries and places mentioned above, Hong Kong ranks fourth from the bottom. Which countries and places are worse than us in this respect? We do better than Mexico, where there are just 13 holidays. There are 17 days in the Philippines and 18 days in Singapore. Since there are 19 days in Hong Kong, we do slightly better than all such countries.

Besides, in respect of advanced countries and places, the greatest number of holidays, being 30, is found in Denmark, Holland and France. In half of the countries or places, employees can enjoy 24 or 25 days paid annual leave. And, in about one third of the countries and places, employees can even enjoy 28 to 30 days of paid annual leave. Therefore, President, by international standards, the number of holidays enjoyed by employees in Hong Kong is honestly on the low side.

We may also look at the historical background. Currently, the statutory holidays in Hong Kong are mainly traditional Chinese festivals and days of official commemoration, such as the first three days of the Lunar New Year, Ching Ming Festival, Labour Day, Tuen Ng Festival, Hong Kong Special Administrative Region Establishment Day (1 July), the day following the Mid-Autumn Festival, National Day, Chung Yeung Festival and Chinese Winter Solstice Festival (21 December) or Christmas Day. As for the five more holidays enjoyed by "white-collar" employees, they are all related to religions. I am very grateful to the Hong Kong Confederation of Trade Unions for giving me this "Give Me Five" sticker today, for it lists clearly all the five extra holidays. They are Good Friday, the day following Good Friday, Easter Monday, the Buddha's Birthday and the first weekday after Christmas Day. President, all this is the unfairness left over by history, marked also by discrimination.

Honestly, I strongly agree that we should not allow "two systems of holidays in one city", or the existence of double standards. What we in the Civic Party support are the concepts and principles of impartiality and fairness. And, our State leaders have also advised us to build a harmonious society. We simply should not treat our "wage earners" (in Miss CHAN Yuen-han's words) in such a way. Currently, roughly 60% of Hong Kong's population are employees, but they are entitled to only 12 statutory holidays a year. This is absolutely unfair. We very much hope that a uniform standard can be worked

out. Another point is that the wording of LEE Cheuk-yan's motion today is actually very mild. He only expresses the hope of "progressively" realizing the principle of fairness.

President, the Civil Party will throw its total support behind the motion. It also hopes that other Members can all uphold the same principle. We strongly hope that the motion can be passed today. And, by the way, there are no amendments to the motion.

President, in the unfortunate event that the motion today cannot be passed, I must once again say that what is happening in the Legislative Council is entirely a reflection of our unfair electoral system, and that the Legislative Council is therefore unable to correctly reflect the wishes of the general public. Any government refusal to support the motion will only prove that the method of forming the government in Hong Kong is plagued with problems. It will also be evident that our Government is biased in favour of certain social strata and sectors. I hope that the Government can make amends before it is too late and act fairly, rather than adhering to the principle of affinity difference.

Thank you, President.

**MR CHAN KAM-LAM** (in Cantonese): President, I rise to speak on the motion on behalf of the DAB.

The criteria for designating general holidays are basically the same in most countries. The designation of holidays is often closely related to traditional customs or creed, especially some special events or festivals. But no matter what the origins of general holidays are, most local people will not have to go to work or school during general holidays, so they can all enjoy themselves. On the other hand, due to job requirements or trade characteristics, many employees must still work as usual on general holidays. This is understandable.

But the point is that there are currently two types of holidays in Hong Kong, namely, statutory holidays (commonly called "labour holidays") and general holidays (commonly called "bank holidays"), each based on a separate ordinance. In theory, most employers can decide on their own the types of

holidays to be enjoyed by their employees. However, in practice, as suggested by how the two types of holidays are commonly called, those who can enjoy general holidays are mostly people engaged in office work, the so-called "white-collar" employees, in other words. And, most employees other than "white-collar" employees, commonly called "blue-collar" workers, can only enjoy labour holidays. The greatest difference is that "white-collar" employees are entitled to more holidays than their "blue-collar" counterparts. "Blue-collar" workers can only enjoy 12 statutory holidays a year, and "white-collar" employers can have five more holidays.

As a matter of fact, the distinction between general holidays and statutory holidays under local laws is, to a certain extent, attributable to our past colonial history and economic development. There are various factors, such as the different treatment accorded by the colonial administration to the local Chinese and Westerners and also the different festivals celebrated by different peoples. But times have changed, so we must not let any such historical factors stand in the way of giving equal holiday entitlement to the great majority of local employees.

To be fair, I must point out that the existence of two different systems of holidays will cause the various trades, industries and even individual employees to make comparison and produce a divisive effect on them, thus hindering the building of a harmonious society. Not only this, we must also remember that very often, "blue-collar" employees must still go to work on holidays and general holidays due to the requirements of their jobs. They can only enjoy such holidays by rotation, or they must simply accept substituted holidays. If we continue to adopt two different systems of holidays, the numerous "blue-collar" employees in Hong Kong will continue to be deprived of the same entitlement to general holidays enjoyed by other categories of employees (especially "white-collar employees), right?

President, the difference of several days of holiday does not only reflect the problem of long working hours affecting certain sectors but also highlights the negative psychological impacts of two systems of holidays on employees. The two different systems of holidays seem to distinguish employees of different sectors and organizations from one another, thus dealing a blow to their morale. Another point is that general holidays are basically "golden opportunities" for many families to spend time together. But some employees are unable to enjoy

general holidays as a result of certain legislative provisions. In order to ensure the mental and physical health of employees, and, more importantly, in order to foster social cohesion, the SAR Government must take measures suited to the present circumstances and progressively amend the two systems of holidays, so that all employees in Hong Kong can enjoy equal holiday entitlement.

With these remarks, President, I support the motion.

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

**MRS SELINA CHOW** (in Cantonese): President, originally, I did not intend to speak today, but since I heard some "positive" messages from Members who spoke on the motion ..... It is naturally easier to appeal to people with such messages. As for the views I am going to put forward, I am afraid Members may not want to consider them. But I must add that they should really give some thoughts to my views. A motion like this will certainly lead to a whole series of knock-on effects on society. A proposal may be good, but still we must consider what price we must pay as a result. It is always better to make things all clear first.

I heard some Members point out ..... Some will of course argue that since there are many Filipino domestic helpers in Hong Kong, if we adopt the proposal of the motion, families employing Filipino domestic helpers will be affected. In theory, one simply should not think that way. Employers are supposed to be generous towards their foreign domestic helpers. I firmly believe that most employers in Hong Kong are very good to their domestic helpers. The reason is that everyone has a good conscience. When we look at a domestic helper working for a family, we will observe that her relationship with her employer is different from the usual employer-employee relationship, because they are together every day. Very often, they live together and share things together. The relationship is therefore not purely commercial in nature. They are together 24 hours a day, so I believe most employers do not have any intention of exploiting or being mean to their domestic helpers. Everybody wants to be happy at home.

There are 250 000 domestic helpers in Hong Kong, meaning that 250 000 families must depend on domestic helpers to look after their children and elderly members. All these families greatly value the role played by domestic helpers.

As Members are also aware, domestic helpers are currently entitled to 12 statutory holidays, on top of the annual leave specified in their employment contracts. The number of holidays for them will also increase, and they can enjoy at least 19 holidays a year. To many families, this is something which they are bound to and should accept, the reason being that domestic helpers should be given holidays for working in their families. And, it must still be mentioned that domestic helpers are also entitled to one rest day a week. But the designation of more statutory holidays may impose a very heavy burden on employers of domestic helpers.

Some Members sound so generous when they argue that more holidays falling on the exact days of festivals must be given to domestic helpers. I do not know how much consultation they have conducted. I frequently talk with younger families, many of which are "two-income families". This means that both the husband and the wife must go out to work every day. If they have small children, they must themselves look after them during holidays. But if their holidays do not coincide with those of their domestic helpers, then, during their own holidays, their domestic helpers will be able to look after their children for them. This will be a kind of relaxation for them. But if the arrangement is changed, if employers and domestic helpers all have the same holidays, I think all these families will grumble. In this connection, I think the Secretary must really listen very carefully to their views. I am not saying that employers are unkind or unscrupulous. The main point is that they also have their needs. I strongly agree that we should not turn this topic into a debate on how employees are treated by their employers, because this is simply not the case in reality. All is just about actual needs.

Mr Andrew LEUNG of the Liberal Party has offered a very clear analysis from a very objective perspective. I very much agree that all such topics should not be discussed in the legislature like any political issues, because if we do so, such topics may easily degenerate into simplistic slogans.

We are not trying to resist change at all costs. We are not saying that the content of the motion must never be considered. But we do think that in-depth discussions are required and such discussions must follow certain procedures. As pointed out by Mr Andrew LEUNG, in the past, such topics must be put before the Labour Advisory Board (LAB) for in-depth deliberation. Many computations must be made, and the impacts on society, all sides involved, small and medium enterprises and various sectors such as services industries must first be ascertained before making any final decision.

Therefore, President, I agree entirely that any discussions on this present motion topic should follow the past procedure of going through the LAB, where genuine and in-depth deliberation will be made. We should not make any hasty decision here by putting forward all sorts of simplistic views.

Thank you, President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If no other Member wishes to speak, I now call upon the Secretary for Labour and Welfare to speak.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Madam President, I am very grateful to Members for their concern about this topic and for the valuable suggestions they have made. Just now, I listened to the speeches of 18 Members, and I could hear the voices of Members from the labour sector especially clearly. I understand that many in our workforce face the problem of long working hours, and I can also appreciate the significance of striking a work-life balance. Besides, I agree that the motion topic today is indeed very mild, and the proposal concerned is well-intentioned.

I now wish to reiterate several points. As I mentioned at the very beginning of this motion debate, the SAR Government (especially the Labour and Welfare Bureau) has always attached very great importance to upholding and improving employees' rights. We actually consider this our major mission.

The Government's established policy is to strike a balance between the interests of employers and employees and also improve and increase employees' rights and welfare, with a view to keeping pace with and supporting Hong Kong's overall social and economic progress. This is a very important point.

As I explained earlier on, "general holidays" and "statutory holidays" are different in terms of background, nature, rationale and course of development. They carry different historical backgrounds. Members should be well aware of this. The objective of the General Holidays Ordinance (GHO) is not to prescribe any requirements on the provision of employee welfare. This is not the intent of the GHO. General holidays used to be called "institutional holidays", meaning that they were regarded purely as holidays for certain institutions. As for the statutory rights specified in the Employment Ordinance (EO), Members should be aware that the EO actually does no more than setting out the minimum standards of employee welfare. For this reason, we have been encouraging employers to adopt an "employee-based" best personnel management practice, whereby they can offer employment terms more favourable than those provided for in the EO in the light of their actual operational situation and circumstances. This practice is very important because apart from enhancing employees' sense of belonging, it can also attract and retain talents. This is very important under the present circumstances.

Many Members have proposed to designate five more statutory holidays. Honestly speaking, we have already conducted a preliminary assessment of the financial implications of this proposal. Our tentative conclusion is that if private enterprises are to keep five new holidays, or statutory holidays ..... If a holiday falls on a Saturday, the costs will be lower. But if a holiday falls on a weekday, the costs will be higher. The costs will be \$220 million for one holiday and \$1.28 billion for five holidays. My listing the figures here is purely meant as an objective statistical analysis, and there are no hidden purposes. I only wish to make the point that with all the competition resulting from globalization, we must objectively and fully consider all impacts on Hong Kong's economy when considering any enhancement of employee rights. I have only tried to provide a statistical analysis for Members' reference.

Over the past few years, as Members are aware, we have been making persistent efforts to make improvements in many areas. We will continue with such efforts.

Besides, we have also been promoting many of the "family-friendly employment measures" discussed by Members today. The promotion of such measures is one of our key tasks now. Our objective is to bring home to employers that while they get to know what their employees are doing in their jobs, they must also consider their employees' family obligations. "Family-friendly measures" are not as difficult to understand as may be imagined. Nor do they necessarily incur any exorbitant costs. Some people have the misconception that it will be very costly to implement such measures. But in reality, only very low costs, or even no costs, are incurred in some cases. For example, an employer may consider the introduction of flexible working hours; an employee having to cope with some sudden incidents may be permitted to leave his post temporarily and work extra hours later on as compensation. Arrangements can be very flexible. And, employers may also grant compassionate leave, parental leave and even matrimonial leave. Some companies have in fact started to grant paternity leave to their employees. If Members have been following this issue, they may know that some large organizations have already started to grant paternity leave to their employees or are moving in this direction. This can show that our employment culture has started to change slowly. This will of course require time. Some companies have already started to adopt flexible working hours, home offices and job sharing. In the future, we will continue to co-operate with the business sector and non-governmental organizations in the promotion of "family-friendly employment measures", with a view to assisting employees in striking a work-life balance.

I have already discussed how Hong Kong compares with other countries and its neighbouring places. I do not intend to repeat all the figures here. I only want to point out that though Hong Kong is not the best, it is certainly not the worst. As a matter of fact, we are on a par with many countries. In the Asia-Pacific Region, we certainly rank among the top four or top five. Another important point I wish to repeat is that under the existing legislation, any employee who has worked for the same employer for one year shall be entitled to at least seven days of paid annual leave. This is a statutory requirement. And, the length of such paid annual leave will of course increase proportionately to the length of service. Having worked for the same employer for nine years, an employee will be entitled to 14 days of paid annual leave. This means that on top of the 12 statutory holidays, there are seven more days of paid annual leave. In other words, there are totally 19 days a year. Employees with longer lengths of service are of course entitled to more. They can have seven more holidays,

meaning that there are totally 26 holidays for them, that is, 12 days plus 14 days. When weekly rest days are counted, there will at least be 71 to 78 holidays in a year. We must look at the issue from the overall and macro perspective. Besides, Members must not forget that employees are also entitled to sick leave, maternity leave, and so on. Therefore, we must look at all the holidays as a whole, rather than talking only about statutory holidays. We are of the view that under the present situation, the existing EO can already deal adequately with the rights of employees and the obligations of employers in regard to the provision of holidays. And, employees are also provided with a certain degree of protection.

Madam President, we maintain that the provisions of the existing legislation on statutory holidays can keep pace with Hong Kong's social and economic development. As I frequently stress, we have already struck a balance between the interests of employers and employees. Therefore, at this stage, we have no plan to amend the legislation. However, I still wish to clarify and emphasize that the SAR Government and the Labour and Welfare Bureau will definitely keep abreast of the times as usual. We will continue to take account of the trend and pace of Hong Kong's economic development and review all labour legislation from time to time. If necessary and appropriate, we will certainly, as suggested by Mr LAU Chin-shek, give serious consideration to the possibility and timing of improvements and make proposals to the Labour Advisory Board for exploration and consideration. We will definitely make appropriate decisions at appropriate times and amend and improve labour welfare. This is our established policy, and it applies not only to holidays. We also adopt the same policy at the macro level. We will continue to move ahead. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan, you may now give your reply. You have up to four minutes and 18 seconds.

**MR LEE CHEUK-YAN** (in Cantonese): The Labour and Welfare Bureau said at the end that it would make improvements at an appropriate time. I do not know what is meant by "an appropriate time". I think the time is appropriate now.

Many Members have pointed out that there should be a work-life balance. The Secretary has agreed that a work-life balance should be struck. The Secretary and the Chief Executive have both said that policies must be family-friendly. But why has the Secretary done nothing except encouragement despite all his talk about family-friendly policies? Why does he still refuse to take a concrete step forward and designate one more holiday, two more holidays, three more holidays, four more holidays or five more holidays? I have made it very clear that all is intended to be done "progressively". Ms Audrey EU was right in saying that I want things to be done "progressively", rather than asking for the designation of five more holidays all in one go. But please give me a timeframe, so that I can see how we can proceed progressively and achieve equality ultimately. I can propose, for example, a three-year timeframe for Members' discussions.

I could hear very clearly the speeches made by Mr Andrew LEUNG and the Liberal Party just now. According to them, the issue must be referred to the Labour Advisory Board (LAB) for discussion. Is the Secretary prepared to do so? He said that he would do so at an appropriate time. Even the Liberal Party has expressed its willingness to refer the matter to the LAB for discussion. In that case, it should be initiated as early as possible, so that the proposal can be implemented expeditiously, so that family-friendly policies can be implemented right away, so that a work-life balance can be struck promptly. I therefore think that the Secretary is duty-bound to do so, and so is the Chief Executive. It is a pity that after listening to the whole debate, I found that the entire Government is biased in favour of the consortia and the business sector. It does not even dare to lay a single finger on their interests. The motion represents only a very minor move. But still, it does not dare to do anything.

As rightly pointed out by Ms Audrey EU, I simply do not know whether the wait for equal holiday entitlement will be as long as the wait for universal suffrage. Actually, I know only too well what the voting outcome today will be. President, I know that the motion will be voted down by the Members from functional constituencies. If the votes of the functional constituencies are not counted separately, if all Members' votes are counted as a whole, there will be enough votes to carry the motion. This means that if the Secretary is willing to submit a bill to the Legislative Council, there will certainly be enough positive votes to include general holidays as statutory holidays. Discussions on a

timeframe, the steps required and a roadmap can then commence. This is the most constructive step to take.

I therefore very much hope that the Secretary will not try to evade his responsibility this time around. I hope that he can refer the matter to the LAB for discussion as early as possible, instead of just talking about an appropriate time. He should complete the task expeditiously, so that employees can be given some "breathing space".

President, next, I wish to clarify my point on comparing Hong Kong with other countries because Members may not understand what I am trying to compare. According to some Members, Hong Kong is fine in terms of general holidays. But my point is that when general holidays and annual leave are considered as a whole, Hong Kong is just not fine at all. Our situation is just like that of Third World countries. Where does the problem actually lie? Why are there so few general holidays in other countries? Frankly speaking, it is not necessary for them to designate any general holidays in the very first place. There is annual leave, as many as 20 to 30 days a year. The people there can go on leave during the entire summer, the entire August. This is the situation in other countries. The people there simply do not need to be so "holiday pinching" and fight for just one or two holidays at a time. What I mean is that Hong Kong is really lagging far behind international standards.

President, even the Liberal Party has said that the matter should be referred to the LAB for discussion. What I find very disappointing is that Mr Tommy CHEUNG's remarks were very extreme, very acrid. He accused me of trying to "castrate" employers bit by bit, of being endless in my demand, of being such an idler, of being insatiable and of scaring away all investors. Without any grounds, he said I wanted to "castrate" ..... Does he think that I am "LEE the Castrater"? Well, he should in fact be called "CHEUNG the Castrater". Employers try to "castrate" ..... No, it is also not right to accuse employers in this way. Many employers are not like this. In a sense, many employees have been "castrated" by their jobs to such an extent that Hong Kong's productivity rate is now the lowest. Who then are the real "castraters"? President, my proposal is only intended to strike a balance. Just now, many

points on operating costs were raised. But as I have mentioned, if employees can work happily with initiatives, productivity will be enhanced. In that case, all costs can be recovered.

President, I do not know whether any industrial action is required eventually. I do not know whether the employees concerned should stage a "No Smile" industrial action on the five general holidays in protest against the Government's inaction so far. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEE Cheuk-yan be passed. 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 Tommy CHEUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Tommy CHEUNG 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.

**Functional Constituencies:**

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the motion.

Dr Philip WONG voted against the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Prof Patrick LAU abstained.

**Geographical Constituencies:**

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming and Mrs Anson CHAN voted for the motion.

Mr James TIEN, Mrs Selina CHOW and Mr Jasper TSANG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 26 were present, 11 were in favour of the motion, one against it and 14 abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, 23 were in favour of the motion and three abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

**NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 28 May 2008.

*Adjourned accordingly at twenty minutes past Three o'clock.*



**Appendix I****WRITTEN ANSWER****Written answer by the Secretary for the Environment to Mr Jeffrey LAM's supplementary question to Question 5**

As regards the loss of rental income to the Government for the period between the expiry of the old lease and the commencement of the new lease since the implementation of the new tendering arrangement of petrol filling stations (PFS) from 2003, according to the new tender arrangement for PFS sites, which has been implemented since June 2003, the PFS sites (old or new) are put up for sale by public tender in batches. Depending on the availability of the PFS sites in the year including those existing PFS sites of which the leases would expire within that year, the available sites are arranged in batches of three to four months apart for sale. Each batch contains two to five sites.

The tendering of the PFS sites involves the following procedures:

- (i) issuing tender invitation, which usually allows about six weeks for the potential purchasers to consider the sites put out for tender, study the tender document and prepare their bids (tenderers are required to submit the deposit as specified in the tender document along with their bids);
- (ii) after the close of the tender, the Government will analyse the bids submitted and make a recommendation to the Central Tender Board (CTB); and
- (iii) upon the CTB's approval, the Government will issue award letter to the successful tenderer. According to the tender documents of the 12 PFS sites tendered in the past three financial years, the successful tenderers were required to execute the Agreement and pay the balance of the premiums within 42 days from the date of the award.

In the case of retendered sites, the outgoing lessees are required to satisfactorily complete the decontamination work before returning the sites to the Government. Therefore, we need to make extra allowance in time between the old and new leases, to prevent any delay in handing over the site to the successful

**WRITTEN ANSWER** — *Continued*

tenderers in case the outgoing lessees could not complete the decontamination work on time or require extra time (beyond the expiry of the lease) for such work.

Since lease terms of the retendered sites expire at different times, the expiry schedules may not be able to closely match the planned tender programme (of which the sites are tendered in batches). In this case, if the outgoing lessees wish to continue their operation after the expiry of the leases, and agree to accept the terms raised by the Government (including the required payment), the Government can arrange them to continue their operation for a period of time to tie in with the tender programme. This arrangement, which has been adopted in many retendered cases, not only reduces the intervening period between the return of sites and the commencement of the new lease, but also brings about income for the Government.

In view of the time required for the tendering procedures (detailed in paragraph 3 above), the need to make extra allowance in time (detailed in paragraph 4 above), and the arrangement for extending the leases to tie in with the tender programme (detailed in paragraph 5 above), we are of the view that the intervening period between the expiry of the old lease and the commencement of new lease will not incur any loss of rental income to the Government.

**Appendix II****WRITTEN ANSWER****Written answer by the Secretary for the Environment to Ms Miriam LAU's supplementary question to Question 5**

As regards whether the Government would assist new oil suppliers to locate sites for building oil depots so that they could import oil, the existing oil storage facilities in Hong Kong are adequate. Moreover, the current legislation does not require that the oil has to be stored in Hong Kong. Oil suppliers could adopt different arrangements for storing oil. Possible options include to store oil at storage facility rented from other oil companies or off-shore facilities (for example, in the Mainland).

As regards the search for oil depot sites in Hong Kong, with relevant policy support, the Planning Department will consider whether there are suitable sites, in view of the requirements (including location, site area and development programme, and so on) and other relevant factors, such as the compatibility of the nearby land use, impact on the environment, traffic and infrastructures, and so on. Depending on the planned use of land, application to the Town Planning Board may be required in accordance with the Town Planning Ordinance (Cap. 131) so that the site could be used for oil depot.