

OFFICIAL RECORD OF PROCEEDINGS

Friday, 22 June 2012

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE LEE CHEUK-YAN

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

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

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

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

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

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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 KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

THE HONOURABLE ALBERT HO CHUN-YAN

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

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

DR THE HONOURABLE LEUNG KA-LAU

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MRS CARRIE LAM CHENG YUET-NGOR, G.B.S., J.P.
SECRETARY FOR DEVELOPMENT

MISS ADELINE WONG CHING-MAN, J.P.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

CLERKS IN ATTENDANCE:

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

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

PRESIDENT (in Cantonese): Good morning, Members, we will continue with the resumption of Second Reading debate on the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012.

(Bills originally scheduled to be dealt with at the last Council meeting)

CONSTRUCTION INDUSTRY LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012**Resumption of debate on Second Reading which was moved on 29 February 2012**

MR KAM NAI-WAI (in Cantonese): President and Secretary, we are going to discuss the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill) today. Although I am not a member of the Bills Committee, I know, after reading the relevant papers, that the most important point of the Bill is on the amalgamation of two bodies, namely the Construction Workers Registration Authority (CWRA) and the Construction Industry Council (CIC); that is, the restructuring of the construction industry.

The Legislative Council has had heated discussions on restructuring over the past few weeks. Last night, two Honourable colleagues from the Democratic Party also spoke in support of the Bill, and I heard many Honourable colleagues from different political parties express support for the restructuring. I would like to analyse why Honourable colleagues are so supportive of the restructuring, not the restructuring of the Government, but that of the construction industry.

According to the Government's paper submitted to the Legislative Council, the restructuring of the construction industry has a few objectives, and one of them is the establishment of a single statutory body for the construction industry with a view to ensuring consistent policy and priority setting for the industry, eliminating ambiguity in demarcation of responsibilities and attaining more

effective deployment of resources and sharing of information, as well as enhancing administrative and operational efficiency. Have Honourable colleagues read this paper? These five points above are the major objectives of the restructuring of the construction industry. As it turns out, these familiar objectives of the restructuring of the construction industry should be achieved through organizational streamlining.

Speaking of organizational restructuring, the recent proposal of "five Secretaries of Departments and 14 Directors of Bureaux" also has the objectives of enhancing administrative and operational efficiency, attaining more effective deployment of resources and eliminating ambiguity in demarcation of responsibilities. However, why do we support the Bill on the restructuring of the construction industry, but not the resolution on the restructuring of the Government? It is because the former seeks to combine the two bodies into one to achieve the objective of organizational streamlining while the latter has the features of overlapping and infinite expansion, which has caused serious doubts from us. Therefore, the Government should understand why Honourable colleagues support the streamlining proposal on the restructuring of the construction industry but oppose the Government's "five Secretaries of Departments and 14 Directors of Bureaux" proposal that may inflate the organizational structure.

Apart from a few Members who have expressed support for the objectives of the restructuring of the construction industry, I noticed yesterday that many Members from different political parties also indicated support because during the scrutiny of the Bill, the Government has accepted our advice and listened to the views of Members; consequently, suitable adjustments were made in response to Members' requests. The Bills Committee originally scheduled to hold eight meetings, but I learnt from Dr HO, Chairman of the Bills Committee, that only four meetings had been held.

It turns out that if the Government can heed good advice and listen to the views of Members some Members of the pro-establishment camp have described us as the opposition camp because we oppose everything; that is actually not the case. We have expressed our views to facilitate interaction and exchanges, but that is not the case when the Government introduced the proposal on restructuring. It jumped the queue and acted in an overbearing way, without listening to the views of others. For the sake of face facing, it wanted to implement the proposal on 1 July. If the Government listens to Members'

different views and heeds good advice, as what it has done in the scrutiny process of the Bill, it will gain the support of various political parties.

According to my observation, during our discussion on the Bill from last night to this morning, the summoning bell that some Honourable colleagues are afraid to hear has not been rung. Have Honourable colleagues noticed that? What are the reasons? This highlights the fact that if the Government co-operates with this Council and there is mutual respect I know that Secretary Carrie LAM seemed to have talked to some Honourable colleagues beforehand, and I believe her efforts facilitate a smooth discussion, a win-win situation can thus be attained where there is mutual respect and interaction.

The Democratic Party supports the Bill but we think the Government needs to deal with two very important problems. Some Honourable colleagues have asked if the construction industry had the respect of the public. Can more people be attracted to join the industry after the restructuring? I had an opportunity to meet with some members of the Hong Kong Construction Association Limited not long ago. They told me at the very beginning of our meeting that the present situation is really bad. While there is no new blood joining the industry, many infrastructure projects have been launched, and there is also the ageing problem of employees. The figures on local registered construction workers actually reflect this situation. I remember that the Secretary once gave a PowerPoint presentation to show Members these figures at an earlier meeting of the Panel concerned.

Take registered skilled workers as an example. Among 280 000-odd skilled workers, more than 4% of them aged over 40; more than 5% aged over 45; more than 8% aged over 50; 6.2% aged over 55; and 4.2% aged over 60. There are 28.2% of registered skilled workers aged over 40.

Let us take a look at the situation of registered general workers; the ageing problem is even more serious: 7.2% of them aged over 40; 8.1% aged over 45; 10.2% aged over 50; 8.4% aged over 55; and 6.3% aged over 60. In other words, more than 40% of registered general workers are over 40 years of age. If registered general workers and registered skilled workers aged over 40 are counted together, the total number exceeds 68% of the total number of workers in the industry; that is, nearly 70% of workers aged over 40.

Furthermore, the Government has provided another set of figures. In a paper provided by the Legislative Council Secretariat in February, the Government has mentioned that efforts had been made to improve the problem of an ageing workforce and succession gap faced by the industry. In late January 2012, 935 construction industry trainees participated in the Enhanced Construction Manpower Training Scheme, and 60% of these trainees aged below 35. In other words, more than 400 workers aged below 35 might have joined the industry in the past year. As we all know, when compared with over 280 000 registered skilled workers and registered general workers, 400-odd workers is just a very small number, it is just a drop in the bucket.

I heard Mr Alan LEONG mention yesterday that he watched the television programme "A Dream Comes True". I had also watched this programme and I believe many Hong Kong people had watched it. I think this is one of the fairly good programmes produced by the Radio Television Hong Kong. When Honourable colleagues have time, they may review the programme online. The programme not only introduces bar fixers, foremen, crane assembly and disassembly workers, and workers responsible for scaffold erecting, and so on at a construction site, it also depicts other professions, such as engineers. The purpose is to enhance the image of these work types and improve public feelings about these industries. Nonetheless, I think that is not enough.

The Government has mentioned the measures adopted to strengthen the manpower in the construction industry at an earlier meeting of the Panel on Development, the Government made a PowerPoint presentation to introduce the improved measures in respect of safety, cleanliness and welfare. For instance, the provision of workers rest areas, safety briefings given by foremen, election of model worker, as well as the establishment of an industry system, the ultimate purpose is to enhance the image of the industry. The most important point is whether this industry can make ordinary people honestly speaking, in various parts of the world, the wages of construction workers are many times higher than that of civilian staff at the same level. We all know that the work in the construction industry is hard and tough. As a parent, if you ask me whether I will allow my son to join the construction industry or become a construction site worker I remember that Mr LEE Wing-tat mentioned yesterday that people who did not do well academically would have to work as construction workers. Up until now, people still have this impression on the construction industry.

To help the construction industry gain the respect of other people including employers, efforts must be made in respect of their wages, benefits, and especially safety for example, I learnt from a news report yesterday that a cleaner — who might not belong to the construction industry — died from falling from a gantry framework. This is an industrial safety issue that all of us are earnestly concerned about.

I also learnt from the Government's paper that funds amounting to hundreds of millions of dollars will be allocated, including an additional allocation of \$100 million to be spent on construction sites, wages and training of construction workers. This indicates that the Government has done a lot of work, but I would like to tell the Secretary that this is still not enough. A television programme helps to disseminate the message, but that is not enough. We are more concerned about how to help the industry gain more respect in our society.

The Government has, in its paper, given an account on how to enhance the image of the industry and help the industry gain more respect in our society, however it has not responded to some of our questions raised at the meetings of this Council. These questions include how the public can monitor the work of the CIC upon the amalgamation; will there be room for a reduction in registration fees upon the amalgamation; as well as what kinds of training and skills testing will be provided to construction workers after the amalgamation. I hope the Secretary would answer all these questions later.

Recently, incidents of high-ranking officials and eminent persons having erected illegal structures have been exposed. The erection or removal of illegal structures is very often done by construction workers; will this have impacts on their registration? I trust that this is also an issue of public concern. I hope the Secretary would late respond to this point regarding to the registration system of construction workers.

I so submit, President.

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

MR LEE CHEUK-YAN (in Cantonese): President, the Labour Party certainly supports the Bill today. We have discussed a specific problem for years and I hope that it can finally be solved today after the passage of the Bill.

Whenever we come into contact with workers at construction sites, the Construction Site Workers General Union of the Confederation of Trade Unions receive the strongest complaint whenever we meet with them, they show us their wallets stuffed with all sorts of cards. They also have a plastic holder in which all the cards/certificates can be neatly displayed. They really do not know why they have to carry so many cards/certificates, and they ask me when they can only carry one card instead.

One important feature of this Bill is that all information, including the Green Card and the registered information of a worker the legislative amendments allow the future storage and display of information of other construction-related cards/certificates issued by other authorities. If such storage is allowed, all information concerning a worker in the construction industry can be stored in one card. With an "all-in-one card", the construction workers this may seem a trifling matter to us but these workers have been complaining for many years. Workers have complained since the day of implementing the registration and the Green Card system, and they query why they need to carry so many cards and show the plastic holder containing many cards/certificates when they enter a construction site.

There are also other problems. We notice that the registered work types of construction workers have become increasingly if a worker has a variety of skills, he needs to register for the cards/certificates for different work types, and these cards/certificates have different effective and expiry dates. This brings big trouble for workers and they often need to update the registration for their skills. I hope this procedure can become as simple as possible. Theoretically, if a worker already has the skills and knowledge required for a Green Card, is it necessary for him to register once every few years? I believe improvements should be made. At least, they only need to carry an "all-in-one card". After the implementation, we hope construction workers will complain less, at least they no longer need to carry so many cards to work.

Secondly, we notice that the amalgamation of the Construction Workers Registration Authority (CWRA) with the Construction Industry Council (CIC) will streamline the structure as the functions of the CWRA will be conferred on

the CIC, and we will definitely support organizational streamlining. Nevertheless, I hope that the Bureau can make commitments to show its concern for the interests of employees, and that the existing employees of the CWRA and the CIC will not lose their jobs following organizational streamlining and amalgamation.

According to my understanding, the Bureau has committed that their respective employment contracts will at least be honoured until their natural expiry. But, it is not enough to honour these contracts until their natural expiry and employment on contract terms are undesirable. There are no stable jobs in Hong Kong and nearly all employees are employed on contract terms. We consider that the CIC should employ fewer employees on contract terms and it should employ permanent employees. If it only promises to honour these contracts until their natural expiry, what will happen after their natural expiry? Frankly speaking, should employees be dismissed, and if they are members of trade unions, we will certainly fight for retaining their jobs. We do not want to get entangled in the layoff and personnel management problems of the public sector and we really hope that these organizations can offer stable jobs to employees.

Thirdly, Mr KAM Nai-wai has just asked if the passage of the Bill will be conducive to enhancing the image of the construction industry. Honestly, this is not the purpose of the Bill. At present, there are difficulties in staff employment in the construction industry; or few young people are willing to join the industry. I think this is due to the safety and image problems of the construction industry. I often tell members of the Hong Kong Construction Association that these problems must be solved so that people will feel at ease when they consider joining the industry. Unfortunately, the occupational safety of the construction industry has always been worrying. The number of workers killed and injured has been on the increase as the construction market thrives, and the situation is worrying. Parents worry about the safety of their children if they want to join the industry. As long as the safety problem has not been solved, it will be difficult to attract young people to join the industry.

For young people, the image issue is another problem that has to be addressed. We will certainly try our best to promote a change in the culture of the construction industry, so that workers joining the industry will feel proud and have a sense of accomplishment. People will think that the industry is admirable. Bar fixing is amazing, it is not easy at all. We had recently organized the Workers Festival and we had invited Secretary Matthew CHEUNG.

We did not ask him to carry out bar fixing — we dared not ask him to carry steel bars for they are too heavy — we just asked him to twist some wire and experience the strength required. We would like to publicize that the skills required is high and workers well deserve our respect. We, trade unions, will make greater efforts to promote this industry; but we hope the Government and the industry can do a good job in respect of safety and image.

If Honourable colleagues visit the construction sites in Japan and South Korea, they will find that the construction sites in these countries are very clean and people will feel comfortable working there. Why can't Hong Kong do the same? Some construction sites currently provide workers with decent facilities such as shower rooms. Can more promotional efforts be made? Construction workers are beaded with sweat after a hard day's work; they need a place to rest a while and take a shower before going home. They will then feel more refreshed. We should give more thoughts in these areas. Is there any government construction site that can play a modeling role? If so, people will then realize that a construction site can be clean and safe with ideal facilities, and they will feel that the industry will make progress. If greater efforts can be made in this connection, I believe more people will be encouraged to join the industry. This is better than simply we will definitely give our support if the industry increases wages to attract young people; but we think this is not enough because high wages alone cannot attract young people to join the industry. Even if some young people are attracted by high wages to join the industry, when they find that they are in danger after taking up the jobs, or when their parents do not feel relieved or if the image of working as construction workers is not good, they will eventually leave the industry. It will be more effective if we can work in the direction of establishing a healthy, safe and clean construction site as a model, thereby promoting the overall improvement in the industry.

President, I will pay close attention to the response of workers to the "one-in-all-card" after the implementation of the Ordinance. Yet, we hope the Bureau would consider simplifying the procedures in the future with regard to testing, examination, updating work type registration once every few years, re-testing, re-registration and paying examination fees for each examination. We believe it is more desirable to make these procedures as simple as possible so that workers can work contentedly and they do not have to worry about these administrative matters. Thank you, President.

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

(No Members indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Development to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR DEVELOPMENT (in Cantonese): Good morning, President and Members. First of all, I would like to express my heart-felt thanks to Dr Raymond HO, Chairman of the Bills Committee on the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bills Committee), and the other members of the Bills Committee. As Ms LI Fung-ying has said, the Bills Committee had very efficiently completed the scrutiny of the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill). This Bill was only introduced into the Legislative Council on 29 February this year and it is gratifying that this Bill can be passed within the term of office of the current government. The object of the Bill is to further strengthen the human resources of the construction industry through the amalgamation of the Construction Workers Registration Authority (CWRA) with the Construction Industry Council (CIC). As Dr Raymond HO has said, the Bill appeared very simple but it is extremely important to the future development of our construction industry. The amalgamation of the CWRA with the CIC is meritorious; for example, as a number of Members have mentioned in this debate, it would be conducive to enhancing worker training, improving the employment arrangements and the prospects of workers, and helping the CIC play a more proactive role. In the course of scrutiny of the Bill, the Bills Committee has expressed valuable views and it has invited the bodies involved in the proposed amalgamation, the related industry associations and trade unions to express their views. We have accepted the views of the Bills Committee and followed up the relevant matters.

As I mentioned when the Bill was introduced into the Legislative Council on 29 February, after the Construction Industry Review Committee (CIRC) completed a comprehensive review of the local construction industry in January 2001, one of its very important recommendations was the setting up of a single industry co-ordinating body to spearhead reforms, with a view to sustaining

momentum to achieve continuous improvements across the construction industry. Following the amalgamation of the CIC with the former Construction Industry Training Authority Construction in 2008, we now have the amalgamation of the CIC with the CWRA, which can really achieve the objective of setting up a single industry co-ordinating body. As Mr Alan LEONG has said, the structural reform has been completed.

Besides the structural amalgamation of the CWRA with the CIC, the Bill also streamlines other administrative procedures, and improves the efficiency of the workers registration system and the operation of the CIC. I thank the Bills Committee for its support and recognition of the policy objectives of the Bill.

In the scrutiny process of the Bill, the Bills Committee and the bodies present at the meetings had expressed their concerns, including the concerns on the structure and operation efficiency of the amalgamated CIC, the transitional arrangements for staff and workers registration, and I would like to take this opportunity to give a response.

At present, the CIC and the CWRA have different functions and responsibilities; hence there should not be any overlapping in organizational structure after the amalgamation and the organizational structure would not be inflated. The composition of the CIC as the single industry co-ordinating body includes employers, professionals, academics, contractors, workers, independent persons and government officials. As such, the views of all sectors are fully reflected when the CIC formulates long-term strategies for the construction industry which helps promote development of manpower resources and the healthy and sustainable development of the industry. The amalgamated CIC can improve efficiency of the workers registration system and operation of the CIC in the following areas:

First, amalgamation will lead to consistent policy and priority setting for the industry. Prior to amalgamation, the CIC and the CWRA, each with its own functions and powers, formulate and set their own respective policies and priorities. Upon amalgamation, procedures will be streamlined and only the amalgamated CIC will formulate policies and set priorities for the construction industry as a whole. This will ensure consistent policy and priority setting to meet the needs of the industry more efficiently.

Second, amalgamation will enhance administrative and operational efficiency. Construction manpower development, training, trade testing and worker registration are closely linked. While the CWRA is responsible for workers registration, other matters are handled by the CIC. To a certain extent, the situation is similar to that of the Social Workers Registration Board as mentioned by Mr WONG Sing-chi. The CWRA is currently responsible for the mandatory registration system of construction workers, and it may not be able to completely and proactively make efforts in training and development. Upon amalgamation, only one single body will be responsible for formulating, promoting, implementing and reviewing all the relevant functions. Obviously, this will help enhance operational efficiency, achieve synergy and facilitate the nurturing of a high quality professional workforce to meet the demands of the construction industry.

Third, amalgamation will facilitate more effective deployment of resources and the sharing of the resources and information of the two statutory bodies. For example, the resources of the CIC may be used to upgrade the electronic facilities and computer systems of the CWRA; whereas the data on workers' skill levels maintained by the CWRA will be useful for formulating longer-term and enhanced training and trade testing programme for workers to meet the needs of the market.

A Member worries if amalgamation will turn the CIC into an independent kingdom without sufficient regulation. I think Members can feel relieved as there are various regulatory mechanisms under the current Construction Industry Council Ordinance, covering the composition and accountability requirements of the CIC as I have just said, as well as the supervision by the Legislative Council. The Development Bureau is certainly duty-bound to enhance regulation of the CIC upon amalgamation.

We have also included various new measures in the Bill to better cater to the interests of workers. I believe this is particularly welcomed by a few Members representing trade unions. The measures to better cater to the interests of workers are:

- to include a new provision to enable a construction worker registration card, issued under the Construction Workers Registration Ordinance, to store and display information of other construction-related cards/certificates issued by other authorities, so

as to reduce the number of cards that a worker would need to carry. As such, an "all-in-one card" as described by some Members can be issued;

- to allow more lead time for renewal of worker registration from three months to six months before the date of expiry of the registration; and
- to empower the CIC to allow extension of the validity period of registration as skilled worker (provisional) and semi-skilled worker (provisional) under circumstances beyond the control of the workers concerned, such as illness or injury; and
- to increase the number of workers union's representatives in the statutory structure from two to three, which is very important.

I am really pleased that the proposals in the Bill to further improve the operational efficiency of CIC have the support of Members. One of the proposals which is closely related to the interests of workers is to expand the functions of the CIC to provide flexibility for it to finance educational, publicity, research or other programmes relating to occupational safety and health, environmental protection or sustainable development in the construction industry. This proposal to expand the functions of the CIC and my later proposal to slightly increase the construction industry levy to be collected by the CIC will allow the CIC to take better care of the welfare of workers in the industry. For instance, there will be express provisions in the future on measures related to occupational safety and health, and measures on screening programmes for workers, as recommended by many trade unions.

In the course of deliberation, the Bills Committee is most concerned about the transitional arrangements for the staff concerned. In fact, whenever there is any restructuring or amalgamation, Members would be concerned about these arrangements. Their concerns include: the transitional arrangements for staff serving the CWRA Secretariat, whether the conditions of service of the contract staff under the CIC who are performing registration functions on behalf of the CWRA will be affected, and the transition of the staff of the former Construction Industry Training Authority (ex-CITA). They have actually expressed concerns for three groups of staff. I extend my sincere thanks to the Bills Committee for

its concern about employees; we attach great importance to the well-being of employees.

The CWRA Secretariat currently has 23 contract staff. The CIC has always been concerned about the transitional arrangements for staff serving the CWRA. The CIC and the CWRA had formed the Joint Working Group for Preparation for Amalgamation since early 2011. They have met regularly to hold discussions, and reported the progress to the Chairman of the CIC, the Chairman of the CWRA and the Development Bureau. We have added a clause to the Bill to provide for the continuation of the employment contracts for staff serving the CWRA Secretariat upon amalgamation of the CIC with the CWRA, until their natural expiry. The CIC would also commit to extend the employment contracts of all serving CWRA Secretariat staff, to until two years after the date of amalgamation, in terms and conditions not less favourable than their prevailing contracts.

In order to enable the staff to feel more relieved under the transitional arrangements, the CIC has made the following commitments on 5 June:

- (a) the CIC will recognize the period of service of staff with the CWRA;
- (b) the CIC will assess staff's performance and the annual adjustment of salaries according to existing policies and systems; and
- (c) the CIC will offer new contracts to staff concerned for consideration not less than three months before the amalgamation date. I note the concerns of a few Members for the current contract staff of the CIC and staff employed on permanent terms, I will ask the CIC to conduct an in-depth study.

Another group of staff are some of those currently on the permanent establishment of the CIC. They have all along provided workers registration service on behalf of the CWRA. The conditions of service of the 14 contract staff concerned will not be affected by the amalgamation of the CIC with the CWRA. The Development Bureau has contacted the CIC management, and urged the CIC to make a commitment to the above contract staff about the transitional arrangements. We learnt that the CIC has notified the staff concerned of the commitment on 24 May.

The third group of staff is the staff of the ex-CITA. Upon the amalgamation of the CIC with the ex-CITA in 2008, the CIC also made a commitment to the staff of the CITA at that time. We know that the CIC has honoured the commitment. Regarding the concerns about human resources and the working environment as expressed by the staff concerned at the meetings of the Bills Committee, the CIC management met with the representatives from the Construction Industry Council Staff General Union on 24 May, and they have promised to follow up staff concerns. I would like to take this chance to express my thanks to Members. During the above communication between the management and the staff concerned, members of the Bills Committee, especially a few Members from the labour sector, had actively taken part and had given us strong support. I remember that, when the CWRA staff learnt that the House Committee agreed to support the resumption of the Second Reading debate of the Bill in June, they met with some Legislative Council Members, Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou, on 26 May, and requested for a meeting with the Development Bureau. Without much delay, the Development Bureau met with the CWRA staff concerned and Legislative Council Members, Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou, three days later on 29 May, and listened to the concerns of the staff concerned. The Development Bureau also promised to co-ordinate the transitional arrangements for the staff of the CIC and the CWRA, and ensure that the transitional arrangements will be implemented smoothly. I can also promise here that the Development Bureau will continue to monitor the CIC and follow up the transitional arrangements about which Members and staff are concerned.

To tie in with the amalgamation of the CIC with the CWRA, and the consolidation of the worker registration card and other construction-related cards, the registration card will be redesigned by the CIC, and the new design will include the use of a durable material. In the registration process, the CWRA only collects essential personal information (for example, Hong Kong Identity Card number, address and contact phone number) and documents on registration qualifications; if a worker chooses the merger of a construction worker registration card and a Green Card, he has to provide information on the Green Card. The data so collected has been handled by the CWRA in accordance with the provisions under the Personal Data (Privacy) Ordinance and the CIC will abide by the relevant provisions after amalgamation.

In today's discussion about a bill on the construction industry, a number of Members have taken the chance to express extensive views on areas such as

manpower, and industry prospect of the construction industry, I would like to give a consolidated response. As a matter of fact, in the past few years, we have vigorously promoted infrastructural development. In view of the increasing number of work projects, I have pointed out, on different occasions, that the biggest challenge ahead is the manpower problem of the construction industry, in terms of the quantity as well as the quality and technology of workers. I am really thankful to the Legislative Council for approving a total amount of \$320 million at two meetings of the Finance Committee for supporting the work of the CIC and the Development Bureau on publicity and public education, with a view to attracting more people to join the construction industry and enhancing the skills and competitiveness of construction workers through training and trade testing. For instance, the programme "A Dream Comes True" produced by the Radio Television Hong Kong, as mentioned by a few Members, is part of the publicity programme.

Regarding the work types with serious problems of ageing workforce and staff shortage, as the monthly training allowance for a trainee has increased to around \$8,000, the situation, mentioned by Mr WONG Sing-chi and Mr LEE Wing-tat yesterday, that construction workers have to pay for their training has been improved. We hope that through the provision of training allowance, fresh blood will be attracted to join the construction industry and receive training. Moreover, with the active participation of contractors, we have implemented the Contractor Co-operative Training Scheme, under which contractors can first recruit workers and then provide them with on-site training on the related work types, thus increasing the manpower resources of the construction industry. The effects of these measures are beginning to show, and I observe that many young people have joined the construction industry after training.

Lastly, I would like to talk about my expectations of the prospects of the construction industry. When I took office as Secretary for Development in July 2007, there were extensive reports on the Queen's Pier incident. I wonder if Members remember another incident that happened on a hot Sunday. A group of bar fixers took to the streets on a hot Sunday to protest against their employers owing to employment and wage disputes, and they occupied a traffic lane along Queen's Road Central. As always, I was working in my office that Sunday, and I heard very noisy sounds. I said to myself, as Secretary for Development, I was also responsible for infrastructural development and the construction industry, and I did not want to see, within my five-year term of office, any more disputes among trade associations, trade unions and workers which would upset social

order or disrupt harmony in the industry. In the past five years, stakeholders in the industry and I worked hard with this vision in mind, and we hope to improve the culture of the construction industry as a whole. Certainly, with the benefit of the vigorous promotion of infrastructural development, increasing job opportunities and rising salaries, we can settle employment disputes much easier.

Many people who have attended the construction industry seminars should remember what I have said, and I have worked very hard to build up three types of culture in our construction industry: first, caring; second, harmony; and third, progress. I would like to simply recall what have been done in the past few years in these three areas.

Certainly, in respect of the caring culture, site safety is the prime concern. Although site safety in Hong Kong has constantly improved in the past 10 years, especially at public sector sites, we cannot be complacent. As Mr KAM Nai-wai has said, with an increasing number of projects, there will be higher opportunities for accidents to occur. The performance was unsatisfactory last year, that is, in 2011. The number of industrial accidents causing casualties in private sector sites and government sites has increased and this is really saddening. For this reason, we launched a territory-wide Construction Safety Week in May, hoping to raise public awareness of site safety. Furthermore, we have specifically provided some payment incentives under the public sector contracts to enhance site safety. Awards will be provided to well-performed sites and contractors are encouraged to provide site safety training to workers.

The caring culture also includes providing construction workers with a better working environment. Whenever there is an opportunity, I would invite and welcome Members to visit the present working environment of public works sites under the Development Bureau. The measures implemented at present make the sites clean and tidy, and we have provided some amenity facilities, such as lockers and shower facilities, for use by workers. I often say jokingly to the Permanent Secretary of the Works Branch that we hope construction workers can go for a date or a movie at the end of a day's work at construction sites after taking a shower. This is the objective we would like to achieve, and we have also proposed and provided uniforms for construction workers. If Members do not have time to visit our sites for the time being, they can browse the blog of the Financial Secretary. I invited the Financial Secretary to visit one of the sites

three weeks ago. He chatted with construction workers and understood more about their working environment.

We should also be caring for the youth. We are particularly concerned about young workers in the industry, be they engineers, site supervisors or workers, we attach great importance to their work. The caring culture should not just be empty words, as money also matters. If contractors, sub-contractors and workers do not get paid, caring is out of the question. Hence, we attach great importance to improving the existing practice of contractual payments. In particular, it was extremely difficult to borrow loans after the financial tsunami in 2009. We understood that many contractors and sub-contractors in Hong Kong, including some large companies, had cash flow problems. Thus, we implement a temporary measure at that time to improve the payment arrangements under government contracts. For example, the arrangements for early or milestone payments. I am delighted to tell Members that these measures are not just temporary measures for they have now become permanent measures to improve the industry's contractual payments.

Even if there are around 10 days before the end of my term of office, I will also consider the enactment of legislation on security of payment. We have conducted extensive surveys and we think that it is time for enacting legislation to ensure that every party participating in construction projects will have security of payment. I told Members representing trade unions such as Mr WONG Kwok-hing in private that hopefully, some day I could say out loud in this Council, just like what he has said, that the situation of "all sweat, no pay" should no longer be tolerated. We must legislate to provide a guarantee that workers, contractors and sub-contractors can get the rewards for their hard work as stipulated in the contracts.

Mr WONG Kwok-hing highly commended Mr Abraham SHEK yesterday, and I would also like to express our gratitude to Mr SHEK here. Mr SHEK led the establishment of the Construction Charity Fund. Through donations raised from industry players, immediate assistance can be provided to the families of workers who unfortunately passed away at construction sites; this is the so-called timely help. Last year, Mr SHEK raised \$13 million of funds by singing at a concert, which allowed the Charity Fund to show our care to needy workers and their families through the Hong Kong Construction Industry Employers General Union.

In building a harmonious culture of the construction industry, it is most important to resolve disputes. As we all know, the Secretary for Justice has been actively promoting the mediation culture in recent years, and we have introduced into construction projects this mediation culture or an alternative mechanism for resolving disputes. We have recently introduced some new engineering contracts under which the employers, that is, the Government and the contractors, can handle project disputes in a more harmonious way. It is initially proven that this new contract type is a success and we are prepared to continue to promote the adoption of this new contract type. As regards the harmonious culture at construction sites, we must rely on Labour Relations Officers to ensure that workers will be paid according to the terms of employment. Once they are aware of likely labour disputes, they should try to resolve these disputes in advance.

The third culture that we should promote is the progress culture. As some Members have studied the statistical figures provided by the authorities. Among some 200 000 registered construction workers at present, more than 40% are over 50 years of age while more than 60% are non-skilled workers, and they can hardly meet the future challenges of large-scale infrastructural development. As I have just mentioned, the Legislative Council has approved a funding of over \$300 billion for us to do a lot of work in different areas. It is definitely important to increase the human resources of the industry, and to give industry players professional recognition is of equal importance. That is why Mr WONG Kwok-hing has mentioned the recognition of railway engineers. I will follow up this issue with my colleagues and seek advice from the Hong Kong Institution of Engineers and other related bodies concerning how the issue of professional recognition should be followed up.

In short, the task of improving the structure of the construction industry through this Bill can be described as a success. But, I believe that we have not succeeded in enhancing the standard of the construction industry and providing the youth with a more satisfactory industry and we should continue to make greater efforts. Using the amalgamated CIC as a platform, I am confident that we should be able to get good results through the CIC and the stakeholders.

President, if the Bill is passed, it will provide a more favourable environment for the progress and development of the construction industry in

Hong Kong. I implore Members to support this Bill today and the amendments that I will later move at the Committee stage.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): The Construction Industry Legislation (Miscellaneous Amendments) Bill 2012.

Council went into Committee.

Committee Stage

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

CONSTRUCTION INDUSTRY LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012.

CLERK (in Cantonese): Clauses 2 to 7, 9 to 17, 20 to 26, 30 to 41, 43 to 57, 59 to 63 and 65.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the above clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1, 8, 18, 19, 27, 28, 29, 42, 58 and 64.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the amendments to clauses 1, 8, 18, 19(2), 27, 28, 29, 42, 58 and 64(2), as set out in the paper circularized to Members.

All the proposed amendments only involve minor textual or technical changes. For instance, the amendment to clause 8 proposes to delete "and powers" from the heading of section 8 of Construction Workers Registration Ordinance (CWRO) because the amended section 8 of CWRO contains only functions of the Construction Industry Council (CIC).

The amendment makes the provisions consistent, clear and accurate, and can better reflect the policy intent and ensure the consistency between the Chinese and English versions.

Chairman, the above amendments have been discussed by the Bills Committee and they have the support of the Bills Committee. I implore Members to support and pass the amendments. Thank you, Chairman.

Proposed amendments

Clause 1 (See Annex II)

Clause 8 (See Annex II)

Clause 18 (See Annex II)

Clause 19 (See Annex II)

Clause 27 (See Annex II)

Clause 28 (See Annex II)

Clause 29 (See Annex II)

Clause 42 (See Annex II)

Clause 58 (See Annex II)

Clause 64 (See Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1, 8, 18, 19, 27, 28, 29, 42, 58 and 64 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the above clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

CONSTRUCTION INDUSTRY LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the

Construction Industry Legislation (Miscellaneous Amendments) Bill 2012

has passed through Committee stage with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): The Construction Industry Legislation (Miscellaneous Amendments) Bill 2012.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Council now resumes the Second Reading debate on the Personal Data (Privacy) (Amendment) Bill 2011.

PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2011**Resumption of debate on Second Reading which was moved on 13 July 2011**

PRESIDENT (in Cantonese): Dr Philip WONG, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

DR PHILIP WONG (in Cantonese): President, in my capacity as Chairman of the Bills Committee on the Personal Data (Privacy) (Amendment) Bill 2011 (the Bills Committee), I report the major deliberations of the Bills Committee.

The objective of the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill) is to provide for clearer and more stringent regulation over the use of personal data in direct marketing and provision of personal data to others for use in direct marketing, so as to afford more personal data privacy protection to data subjects. The Bill also empowers the Privacy Commissioner for Personal Data (the Commissioner) to provide legal assistance to aggrieved persons intending to institute legal proceedings, makes new provisions relating to the Commissioner's powers and liability, creates a new offence for repeated contravention of the requirements under the Personal Data (Privacy) Ordinance (PDPO), and introduces heavier penalties.

(Mr James TO raised his hand in indication)

PRESIDENT (in Cantonese): Dr WONG, please hold on. Mr James TO, what is your point?

MR JAMES TO (in Cantonese): President, a quorum is not present.

PRESIDENT (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Dr Philip WONG, please continue.

DR PHILIP WONG (in Cantonese): The Bills Committee held a total of 16 meetings to examine the Bill in detail and received views on the Bill from deputations and individuals at two of the meetings.

The Bills Committee has expressed support for tighter regulation on the use of personal data by enterprises in order to afford more protection to the data subjects. Members have, however, found it necessary to strike a balance between safeguarding personal data privacy and ensuring business efficacy.

The Bill provides that a data user who intends to use or provide the personal data of a data subject to others for use in direct marketing shall inform the data subject in writing and provide the data subject with a response facility through which the data subject may indicate in writing whether he objects to the intended use or provision (that is the "opt-out" mechanism). Members have expressed diverse views on this "opt-out" mechanism. Some members consider that the "opt-out" mechanism falls short of the public expectation for the provision of more privacy protection and is in effect a retrograde step. They have called for the adoption of an "opt-in" mechanism under which it is incumbent upon data users to obtain explicit consent from data subjects before the use or sale of their personal data.

Some members, however, have expressed support for adopting the "opt-out" mechanism on the grounds that the "opt-out" mechanism has been adopted by most overseas jurisdictions and the Administration has already proposed to strengthen regulation over the collection, use and sale of personal

data in direct marketing. Some members consider that the present "opt-out" mechanism in the Bill has already struck a balance between protecting personal data privacy and ensuring business efficacy, while providing benefits and choices to consumers at the same time.

The Administration has explained that, coupled with the introduction of the additional requirements under the Bill, the "opt-out" mechanism presently proposed will afford better and more protection of personal data than the existing regulatory requirements. The "opt-out" mechanism also provides data subjects with an informed choice as to whether or not to allow the use of their personal data in direct marketing. This arrangement is in line with the approach adopted under the Unsolicited Electronic Messages Ordinance.

The Bill also proposes that after the data subject has received the data user's request for using or providing his personal data for use in direct marketing, if no reply indicating objection is given within 30 days upon receipt of such a request and response facility, the data subject is taken not to object.

Members have expressed strong opposition to this arrangement as "no reply" cannot be taken as "no objection". Having regard to the Bills Committee's view, the Administration has agreed to withdraw this arrangement. At the same time, it has revised the regulatory regime, requiring the data user to use or provide a data subject's personal data for use in direct marketing only after he has received a reply from the data subject indicating no objection to such use or provision.

Some members have urged the Administration to consider accepting verbal agreement between the data user and the data subject. Such oral consent should be restricted to the use of personal data by the data user for direct marketing purposes and should not be extended to the provision of personal data by the data user to others for use in direct marketing. Having considered members' views and concerns, the Administration has agreed to introduce Committee stage amendments (CSAs) and accept members' views.

Some members have also suggested that the Commissioner should prepare guidance notes to ensure compliance and enhance understanding of the requirements proposed in the Bill. At the request of the Bills Committee, the Administration has undertaken to revert to the Legislative Council Panel on

Constitutional Affairs on the preparation of the guidance notes and the related publicity and public education work.

Some members take the view that a data user who has collected any personal data in compliance with the requirements under the PDPO before the commencement of the new legislative provisions should be allowed to continue to use the data already collected for direct marketing purposes after the commencement of the legislation. The Administration has advised that a grandfathering arrangement for pre-existing personal data subject to certain conditions has already been provided in the Bill. The Administration has agreed to introduce CSAs to extend the grandfathering arrangement to allow direct marketers to continue to use any personal data of the data subject in the same class of direct marketing.

Members have noted that the Commissioner has been providing a wide range of promotional and educational activities with a view to raising awareness and understanding of the provisions of the PDPO. While members do not object to levying a charge by the Commissioner on promotional and educational activities designed to meet the needs of specific sectors, they are of the view that it should be the Commissioner's priority to devote resources to the general public rather than individual organizations, and those promotional and educational activities targeted at the general public should be provided free of charge.

Some members are concerned that the new section 46(8) is too broad, under which the Commissioner may exchange or disclose personal data in response to a request of an authority in a jurisdiction outside Hong Kong if, in the opinion of the Commissioner, the authority is similar to the Commissioner in terms of functions. They urge the Administration to provide more safeguards for personal data exchanged during the co-operation between the Commissioner and authorities in jurisdictions outside Hong Kong.

In response to members' concerns, the Administration has agreed to introduce CSAs to the effect that the Commissioner may disclose matters to authorities outside Hong Kong provided that legislation similar to, or serves the same purposes as, the PDPO is in force in those jurisdictions. The Administration will also introduce CSAs to specify conditions under which the Commissioner is empowered to disclose matters to authorities outside Hong

Kong if the purpose is for the proper performance of his functions or proper exercise of his powers under the PDPO.

The Bills Committee has expressed support for empowering the Commissioner to provide legal assistance to aggrieved data subjects. Some members have suggested that the Commissioner should seek to mediate such claims for compensation before resorting to legal action.

President, apart from the CSAs which I have just mentioned, the Administration has also accepted other recommendations made by members and proposed a number of CSAs. Members support the CSAs proposed by the Administration.

President, the above is my report on the work of the Bills Committee.

MR WONG KWOK-HING (in Cantonese): President, I am very pleased that this Council resumes the Second Reading of the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill) today. May I appeal to Members of all political parties and groupings as well as non-affiliated Members to support the Bill. I also welcome that the Government has accepted a number of our recommendations during the scrutiny of the Bill and proposed amendments based on these recommendations.

President, in introducing the Bill to amend the Personal Data (Privacy) Ordinance (PDPO), the Administration has responded to the motion on "Improving personal data privacy protection" proposed by me in the Council meeting on 20 October 2010. The motion was unanimously supported by Members of this Council on that day. I made seven recommendations in the motion, of which the second one was (I quote): "(b) to comprehensively review and amend the PDPO immediately to plug the loopholes of the legislation and eliminate the grey areas, and at the same time increase the criminal sanction to achieve a deterrent effect" (End of quote).

I am very glad that the Government is willing to introduce this Bill in response to the second recommendation in the motion. The motion requested the Government to amend the legislation. Why is that important? Because one

of the significant lessons learnt from the Octopus incident is that the Government must amend outdated legislation.

The first paragraph of the motion (that is, the preamble) has clearly explained the background and the need for legislative amendment. (I quote) "That, in recent months, 'Octopus' and 'Autotoll' operated by public transport operators, the finance and insurance sector, and the electronic communications sector, etc., were found to have contravened the Personal Data (Privacy) Ordinance and engaged in unauthorized transfer or sale of the personal data collected to make profits, with extensive implication and significant impact, affecting the personal data privacy right of millions of Hong Kong people; among the above, 'Octopus', the monopoly operator of electronic money, even admitted that it had made a profit of over \$44 million by selling its clients' personal data; the 'Octopus' scandal has revealed that various smart cards currently available in the market, such as bonus cards, membership cards, credit cards, stored value cards and top-up cards, etc., are generally not in full compliance with the requirements of the PDPO, the public's personal data privacy are not properly protected and organizations are able to take advantage of the loopholes and grey areas of the PDPO to indiscriminately collect personal data beyond the scope of purpose for data collection publicly claimed by such organizations, and turn such data into their cash cows, and in the absence of monitoring, the situation has become very serious, causing considerable disturbance to people's daily life; however, due to the limited powers conferred by the law on the Office of the Privacy Commissioner for Personal Data (PCPD) and constraint of resources, the PCPD is not able to exercise effective regulation, and the responsible government departments concerned have also failed to seriously shoulder the responsibility of protecting personal data privacy; in this connection, this Council urges the Government to immediately adopt the following measures to protect the general public's personal data privacy right" (End of quote).

Why did I quote the whole preamble of the motion? Because I think this introduction has given a general explanation on the need to amend the legislation so as to protect Hong Kong people's personal data privacy.

This time, the legislative amendments seek to increase the investigative powers of the Privacy Commissioner for Personal Data (the Commissioner), step up regulation over non-compliance, introduce heavier penalties, provide legal assistance to aggrieved persons and update the instructions and guidelines relating

to irregularities. Hence, I consider that the legislative amendments introduced have responded to the motion unanimously passed by this Council on that day.

President, the Octopus incident lasted some three years, during which the Hong Kong Federation of Trade Unions has continuously followed up the issue and consequently came to an important breakthrough in the Octopus scandal, which eventually compelled the Government to amend the legislation. In this regard, I must state that the Government had actually published a consultation document on personal data privacy protection long ago and had conducted a study, the outcome of which was already available. However, the Government just shelved the consultation outcome for as long as a year. Had it not been the Octopus incident which compelled the Government to expedite the introduction of legislation, I guess this Bill would definitely not have been submitted to the Legislation Council for scrutiny today.

Regarding this incident, I need to extend my thanks to a few people. First, I would like to thank a former employee of CIGNA, who exposed the lie of Octopus Cards Limited. At that time the Chief Executive Officer of Octopus Cards Limited openly claimed before the press that the company had not sold its clients' personal data. Thanks to this former employee, who righteously and bravely unveiled the truth of the story and indicated that Octopus Cards Limited had used 240 sets of personal data for selling insurance, this scandal was then brought to light.

Had this employee not unveiled the truth and stepped forward boldly we had been following up this issue since August 2009, but having followed it up for more than a year, we still had no clue about what to do. Fortunately, with this employee acting as a witness, the incident developed in a new light. For this reason, I describe what happened on 7 July 2010 as the "Octopus upheaval", which led to thorough exposure of the truth of the story and the expeditious intervention of the Office of the Privacy Commissioner for Personal Data (PCPD). The Legislative Council could also further follow up the case in grievance meetings and force the MTR Corporation Limited (MTRCL) (which is the parent company of Octopus) to face up to the matter squarely.

The second person whom I wish to thank is Mr Roderick WOO, the former Commissioner. Back then, when we lodged the complaint to the PCPD, Mr Roderick WOO was going to retire shortly and there was not much time left in his remaining term. Nevertheless, he attached great importance to the case,

followed it up seriously and undertook to launch an investigation and conduct a public hearing. With limited time, resources, manpower and days in his remaining term, he devoted his best efforts to work for the interests of the affected members of the public and the privacy right of the public, adhering to his post until the last moment, and thus the public hearing could be conducted. On that day, I was in attendance during the whole course of the public hearing. May I take this opportunity to express my immense gratitude to Mr Roderick WOO for his contributions in the investigation of the incident and convening the public hearing.

The third person whom I wish to thank is Mr Allan CHIANG, the present Commissioner. He took over this case as soon as he assumed office, yet I did not see the slightest slackness in his work. Apart from accepting and following up the complaints concerning Octopus, he practically dealt with the non-compliance problem with a number of banks and companies such as Autotoll. Besides, standing on his promise, he published the investigation report on the Octopus incident on 18 October 2010.

President, subsequent to the unwavering negotiations and persistent fight, as well as the exertion of pressure on the Government, especially after our heated negotiations with Secretary for Transport and Housing Eva CHENG, Secretary for Financial Services and the Treasury Prof K C CHAN and MTRCL's Chief Executive Officer Mr CHOW Chung-kong, finally, with the collaboration of various government departments, the MTRCL, which is the parent company of Octopus, was forced to undertake the actual implementation of the following four tasks in response.

First, to accept all the recommendations made by the PCPD in the investigation report. Second, to undertake to thoroughly delete under the supervision of a third party all unnecessary personal data which had been collected improperly. This task was completed long ago. Third, to reshuffle Octopus Holdings Limited. As a result, even the company's Chairman was replaced, and the Chief Executive Officer had, of course, also resigned, thereby facilitating Octopus to go back to its main business and concentrate on providing proper services of an electronic money platform. Fourth, Octopus Holdings Limited had to donate all the profits obtained from the sale of personal data (totalling \$57.9 million) to the Community Chest of Hong Kong in two payments. This sum of profits accounted for 1.6% of the company's total revenue.

President, in the last stage of the development of the Octopus incident, we finally succeeded in making the Government amend the legislation. This is the fruit of Hong Kong people's and shareholders' hard work over these three years.

President, as the Bill is submitted to the Legislative Council for scrutiny today, I hope it can be passed smoothly. Nevertheless, I opine that there are still a few points which the authorities need to further follow up upon the passage of the Bill.

Firstly, upon the passage of the Bill, the authorities must formulate relevant guidelines for use by the organizations. At the same time, consumers must also be provided with a clear and standardized template so that they will notice there is an "opt-out" mechanism to protect consumers. We absolutely cannot allow any organization to mislead people with tricks such as printing the relevant sentences with a tiny font size, using clumsy and incomprehensible statements, or even mixing certain clauses among a bunch of statements, so that consumers will not be able to see them and fall into their trap again.

Secondly, the Government should enhance the support for the PCPD and provide it with additional resources to increase its manpower to facilitate effective enforcement, rather than turning the PCPD into a "toothless tiger" or one with broken teeth which has difficulty in enforcing the law.

Thirdly, the Government must allocate additional resources to conduct publicity and educational work so that consumers at large will attach importance to protection of personal data privacy with enhanced awareness of self-protection and will not forget to protect their personal data privacy owing to any inducement, reward or advantage. I think this is a very important point.

Lastly, I hope the Government will conduct a comprehensive review about one year after the passage and implementation of the Bill, so as to understand whether the implementation of the Bill can indeed protect the personal data privacy of the public as expected, and whether there is any loophole or grey area during the implementation which may be exploited by unlawful traders. Timely review is highly important for further improvement of the legislation.

Finally, I thank the Administration for making an active response today to the motion in 2010. Thank you, President.

DR PRISCILLA LEUNG (in Cantonese): President, the occurrence of the Lehman Brothers incident and the Octopus incident have aroused our concern as to whether our personal data will be abused by traders at will. In the Lehman Brothers incident, we noticed that originally, many investors only intended to make time deposits, but later, many different types of investment companies and investment departments induced them to buy products which did not suit them at all. I also have similar experience. That is, beauty salons, London gold investment companies, fitness centres and even shoes shops, for some unknown reasons, had my mobile number. When I asked them who on earth had provided them with my information, many of them just hummed and hawed. I have sufficient reason to suspect that telephone companies which hold our telephone numbers have, without our consent, provided our personal data to operators under some big organizations. I believe a number of Honourable colleagues here also had such experience in the past few years.

The Octopus incident had simply spread the issue further, which drew our attention to whether our personal data has been used casually. Furthermore, we keep receiving numerous cold calls (that is, direct marketing calls) or business calls which we have never agreed to solicit. Apart from taking up our time, more importantly, we are greatly concerned about how many more operators to which our data has been sold by these companies.

The Office of the Privacy Commissioner for Personal Data (PCPD) is one of the public organizations from which I am most likely to seek assistance. May be that is because university staff prefer to seek assistance from the Privacy Commissioner for Personal Data (the Commissioner) to get back their personal data information. Through the Personal Data (Privacy) Ordinance (PDPO), a lot of victims in the Lehman Brothers incident also got back from their banks or dealers the investment information and conversation records which they had left back then. Hence, I consider the PCPD one of the public organizations which are efficient with good performance. Besides, given the many amendments proposed in this Bill, I believe the Government has summed up a lot of our experiences and lessons. According to my past experience of invoking the PDPO, I think we must consider four very important factors in our discussion on the Personal Data (Privacy) (Amendment) Bill 2011.

First of all, the amended legislation should not amount to over-correction, which will make the original good intent end up with lots of unnecessary

problems, thereby affecting social harmony, family relationship, normal business operations, as well as personal privacy protection and government operations. Just now when I mentioned family relationship, I seemed to hear some vague noises over there. Perhaps let me briefly recapped the situation when the PDPO was amended last time. At that time there was an amendment which had caused big disputes between us and the former Commissioner, and a group of parents had even approached him for discussion. Under that amendment which did not define the age of children, if parents went to schools or hospitals to ask for their children's information, they would not be able to get such information without their children's consent. They might even have to get the consent of the school social workers in order to obtain the information. I had asked the Commissioner about the age of children under consideration, and he replied casually that in foreign countries, children aged six might already had such awareness.

Having the view that this matter had not undergone careful consideration, I brought up some privacy problems which involved family relationship. Not everything has to be settled by law. Typically, if you want to get your children's report cards, of course they will say "no", and it will be all the better if they can have their report cards thrown into the litter bin. Parents certainly wish to know about their children's performance in school, but how many children will want their class teachers to tell their parents exactly how they have performed in school? Thus, when we consider amending and perfecting the PDPO, we need to take four important factors into account.

The incident ended satisfactorily. Having listened to the views of a group of parents, the Commissioner agreed that he might have overlooked from a certain angle. The proposal he made at that time was not ill-intentioned. He put forward the relevant amendment because he thought parents might abuse their children's information as well. However, we found this perspective incorrect because 99.9% of parents who sought such information did not mean to hurt their children. Even if there were parents who wanted to hurt their children or might even force them to do something evil, their actions would be regulated under the criminal law. We did not have to add any threshold in the PDPO which would impede the communication between parents and children, since family harmony might not necessarily require legal regulation. It was not workable to resort to the law to regulate everything in a family. Hence, he withdrew that part of the proposal at that time.

Today, after we have experienced the Octopus incident and the Lehman Brothers incident, I think the majority in society have reached a consensus. That is, it is necessary to provide for stricter privacy protection without hindering the existing normal operations. It has been previously mentioned that certain acts may be criminalized, but criminalization is a big punishment. For companies which frequently operate on the Internet, many staff members or technicians will refuse to do certain kinds of work once they are aware of such an amendment. Therefore, under some circumstances, if someone infringes on another person's right with or without purpose, or deliberately uses another person's information to make money, we may consider the matter from a certain angle. That is, if the problem can be settled by civil proceedings, sometimes it may not be necessary to solve the problem by criminal law. It is because such an approach may be similar to cancer treatment. While cancer cells are killed, the freedom of communication which should be protected will also be undermined.

In this amendment Bill, we have mainly argued about the "opt-in" and "opt-out" mechanisms for a long time. We understand that one of the principles for the amendment

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Dr LEUNG, please hold on. Mr Albert CHAN, are you requesting a headcount?

MR ALBERT CHAN (in Cantonese): I seldom hear such a well-organized speech from Dr Priscilla LEUNG. It will be better if more Members come back to listen to it.

PRESIDENT (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, please continue.

DR PRISCILLA LEUNG (in Cantonese): President, just now I mentioned that during the course of discussion on the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill), our main focus and discussion is on the "opt-in" and "opt-out" mechanisms.

Regarding the "opt-in" mechanism, all along we have proposed that if business organizations, especially those which hold our private information, wish to pass our personal data to some big organizations which operate all kinds of business (including even supermarkets), they must obtain clear consent of the data subject in advance. If I have provided certain information for a certain purpose, such information cannot be automatically issued to other organizations under the same group. Selling of information is all the more forbidden because such information is not their property, and it is not owned by them.

In fact, even if the legislation is still not amended today, those organizations are not allowed to sell such information as well. Now we have simply clarified the mechanism in the legislation. If someone really lodges a claim, we will be able to pursue the claim in accordance with the law. If I give my personal data merely to a beauty salon, the beauty salon is not allowed to sell such information to banks or any organizations under that company. Regarding the "opt-out" mechanism However, if a bank receives our information and then uses such information in services relating to the bank, I think the rule can be relaxed a bit in this kind of situation.

As such, there are actually the "opt-in" and "opt-out" all along I have proposed in the Bills Committee to separate them into two categories. I think the Government has also fully considered this view. However, with regard to implementation I know a number of sectors engaging in direct marketing have expressed various views, and many of our Honourable colleagues have voiced out a number of practical difficulties on their behalf. Hence, if sectors engaging in direct marketing obtain the approval of data subjects in the form of oral consent for using their information, I will accept such a practice of obtaining oral consent.

At that time we did not talk about whether there was the need to tape recording such oral consent to serve as evidence, but I opine that written

confirmation is required after all, because there may be big disputes over these matters afterwards. Actually, written confirmation will not only protect data subjects but also data users because it is possible that there will be litigation over such issues time and again in the future.

Hence, I insist that even if there is mutual oral consent, written confirmation must be made within a clear deadline. In this way, both parties will be protected. Moreover, many elderly people — take the Lehman Brothers incident as an example — actually have no idea what they have heard over the phone. Maybe they just mumble "uh-huh, uh-huh, uh-huh" and then hang up. They do not know what they have consented to. Therefore, the wording in the written confirmation should be sufficiently clear to enable the recipients to have reasonable knowledge of what they consented to at that time. I think the Government is willing to accept this requirement.

The discussions of the Bills Committee have also touched on the amount of information which can actually be used by those organizations which have got hold of our data before the commencement of the legislation. Of course, the legislation should carry no retrospective effect upon its commencement. This is a fundamental principle in the rule of law. However, if the organizations have got hold of our data before the commencement of the legislation and at the time we did not agree to have our data sold to other industries, actually we can still handle the matter under the existing legal protection. In other words, the absence of retrospective effect does not mean that the data previously obtained can be sold and passed to other organizations at will. That is absolutely not the case. Even if the information in question have previously been provided by us, we can affix the responsibility under the common law, since we did not agree to allow such organizations to sell the data to other industries for profits.

Under such circumstances, I opine that special considerations can be made for the direct marketing industry. For the same type of service — let me stress that I am referring to the same type of service — if the organizations have received the data and obtained the consent to use such data before the commencement of the legislation, in my view, they may continue to use such information. However, with regard to transferring the data to other industries, I consider that the relevant protection should be provided expressly in the guidelines after the legislation comes into force. Otherwise, there will be many

cases concerning the abuse of data held before the commencement of the legislation. Should there be any misunderstanding, there will be serious trouble.

The Bills Committee has also discussed whether the Commissioner should have the right of prosecution. Personally, I do not render my support for the Commissioner to have the right of prosecution. In fact, I am worried that if the Commissioner has the right of prosecution, he will become another big white elephant. As the Secretary has mentioned earlier in his speech, if the Commissioner can transfer our information to foreign privacy commissioners of the same rank outside Hong Kong, that is actually a great power. We cannot allow an organization to have such a huge power. Therefore, I opine that the right of prosecution should be given back to the Department of Justice. Actually there are many departments that desire to have the right of prosecution. If all these departments are allowed to have the right of prosecution, it will be very confusing and many big white elephants will emerge in Hong Kong. I think such a situation will turn out to give just the opposite effect.

Consequently, let me reiterate that while we protect privacy and support the Bill, in respect of enforcement, education and promotion, both organizations and individuals must be aware of the relevant requirements so as to avoid over-correction when enforcing the legislation, thereby causing inconvenience to the public. Thus, on the enforcement details, I hope the Office of the Privacy Commissioner for Personal Data will be allocated with more resources to facilitate co-operation with the Government and us, so that the public can have a better understanding of the original intent of the amendments and they will not fall into the trap inadvertently.

Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, concerning the issues of the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill), I would like to express our views and stance on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). The Bill was introduced mainly because the occurrence of the "Octopus Rewards incident" in 2010, which had revealed the failure of the existing Personal Data (Privacy) Ordinance (PDPO) to prevent some enterprises or organizations from passing their clients' personal data

to a third party for use in direct marketing before obtaining their clients' clear and specific consent.

To further protect the personal privacy of the public, at the end of 2010 the Special Administrative Region Government launched a public consultation on amending the PDPO, and in July last year, it introduced the Bill into the Legislative Council to amend the PDPO.

Regarding how to further protect the personal privacy of the general public, the Bill mainly tackles the matter in three aspects, which include stepping up regulation on data users (that means enterprises and organizations) in the use of the personal data of data subjects for direct marketing, the provision of such data to other people, enterprises or organizations for use in direct marketing, and the sale of such data; empowering the Privacy Commissioner for Personal Data (the Commissioner) to provide legal assistance to aggrieved persons to claim compensation through legal proceedings against data users in contravention of the PDPO; as well as imposing heavier penalties for contravention of the PDPO, and creating a new offence for the disclosure of personal data obtained without the consent of the data user, and for repeated contravention of the requirements under the PDPO.

Compared with empowering the Commissioner to provide legal assistance to aggrieved persons and imposing heavier penalties for contravention of the PDPO, how to step up regulation on data users while striking a balance between protecting personal data privacy and allowing room for business operations is highly difficult and controversial. One of the questions which has aroused much controversy is, when a data user uses the personal data of a data subject for direct marketing, provides it to other persons for use in direct marketing or sells it to other persons for direct marketing, whether it is more appropriate to adopt the "opt-out" mechanism, meaning that a data user may use the data for a certain purpose if the data subject has not indicated objection to such a purpose, or to adopt the "opt-in" mechanism, meaning that a data user may use the data for a certain purpose only after the data subject has consented to such a purpose.

Undoubtedly, the "opt-in" mechanism can indeed give better protection of the personal privacy right than the "opt-out" mechanism. However, the vast majority of overseas jurisdictions have currently adopted the "opt-out" mechanism in their regulation on direct marketing. Exclusive adoption of the

"opt-in" mechanism in Hong Kong at the present stage will have an adverse impact on the operations of the direct marketing industry. As a result, in adopting the "opt-out" mechanism, the Administration has made some enhanced arrangements, such as introducing the amendment to delete the provision of "taken not to object if no reply sent within 30 days arrangement" in the Bill, requiring all data users to obtain the data subject's reply which explicitly indicates no objection to allowing the data users to use his personal data for direct marketing, or provide or sell it to others for use in direct marketing. A data user who uses the data in direct marketing or provides and sells it to others for use in direct marketing without receiving such a reply from the data subject commits an offence and is liable on conviction to a maximum fine of \$1 million and imprisonment of five years. This "semi-opt-in" and "semi-opt-out" mechanism can prevent the personal data of the general public from being used for direct marketing or being provided and sold to others for direct marketing purposes without any knowledge on their part.

At the same time, to mitigate the impact of the Bill on the direct marketing industry, the Administration has proposed amendments to set up a mechanism for a "grandfathering arrangement" for data users who have collected certain personal data and used such data in direct marketing in compliance with the original requirements under the PDPO before the Bill comes into force. After the Bill comes into operation, data users may continue to use such data for direct marketing. They do not have to obtain the data subjects' indication of no objection to the use of the data for direct marketing before using such data. Of course, the data subjects may at any time indicate verbally or in writing their objection to the data users' continuous use of their personal data for direct marketing.

Apart from this, during the scrutiny of the Bill, the Administration has extensively listened to the views of the Bills Committee and trade representatives and proposed a number of amendments to improve and enhance the Bill. For example, to plug the loophole in the existing PDPO, under which a data user who has complied with the enforcement notice will not be liable to criminal proceedings even if he intentionally repeats the act of non-compliance stated in that enforcement notice.

Judging from this, the DAB considers that regarding the failure of the existing PDPO to exercise effective regulation on enterprises and organizations

and prevent them from using their clients' personal data for direct marketing or providing or selling it to a third party for use in direct marketing before obtaining their clients' clear and specific consent, the Bill can work on and plug the loophole. At the same time, it will ensure that there is sufficient room for business operations in the direct marketing industry, and such operations will not become difficult owing to the passage of the Bill, thereby striking a balance between protecting the personal privacy of the public and allowing room for business operations. As a result, the DAB supports the Bill and the amendments proposed by the Administration.

Mr James TO is going to propose a series of amendments in a while, such as advancing the commencement date of the Bill from 1 October to 8 July this year or the date of Third Reading; providing that after the data subject has withdrawn or given his oral consent, the data user may use the data only if he has not received any objection from the data subject within 14 days after the written confirmation is sent to the data subject; and that the data subject may require the data user to provide the source of information.

The DAB opines that Mr TO's amendments have in a way cancelled the grandfathering arrangement and the arrangement for oral consent, which may pose considerable impact on the operations of the industry and damage the previous agreement reached between the Administration and the trade. The approach of allowing data subjects to require data users to provide the source of information will only be effective for law-abiding data users and will not have much effect on data users who do not comply with the law, yet such a practice will lead to increase in costs for data users. For this reason, the DAB will not support these amendments.

Nevertheless, the DAB considers that with the rapid development in society and people's increasing concern over personal privacy, the Administration and the Commissioner must continue to pay close attention to changes in social and public aspirations for personal privacy and review and amend the PDPO in due course so that the PDPO can better meet the actual social needs and fully protect the personal privacy of the public.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): Mr Ronny TONG, please speak.

(Mr Albert CHAN stood up)

MR ALBERT CHAN (in Cantonese): Mr TONG, sorry. President, I am invoking Rule 17(2) of the Rules of Procedure to request a headcount.

PRESIDENT (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr Ronny TONG, please speak.

MR RONNY TONG (in Cantonese): President, many Hong Kong people assume that their rights to privacy are protected by the law. Very often, when we meet members of the public, they would ask: "Is our privacy right not protected by the law? Why do I, for no apparent reasons, receive so many phone calls promoting services or products that I absolutely do not need?" President, this is attributable to the unhealthy development of our society.

President, it is true there is no provision in the Basic Law stipulating that Hong Kong people's rights to privacy should be protected, and there is only one provision offering protection to private communications. And yet, in the light of the provisions of the International Covenant on Civil and Political Rights (ICCPR) as stated in Article 39 of the Basic Law, Hong Kong is obliged to protect such human rights through the implementation of law. Article 17 of the ICCPR also provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. President, this is the constitutional basis.

Regrettably, ever since the enactment of Personal Data (Privacy) Ordinance (PDPO), the Government has adopted pretty bizarre logic and principles. President, why do I say that the logic and principles are bizarre? Because privacy is a personal right, and must be respected and protected by the law. Business operators should not use it to make a fortune. Yet, encouraging business operators to make a fortune on privacy has always been the stance of the Government. They are not only allowed to do so, but are even protected. This is why when the PDPO was amended for the first time a couple of years ago, we had raised the need to exercise legislative control on incoming human calls promoting products and services which are totally unnecessary to us and received at the most inconvenient times, such as taking a bath, using the bathroom or out of town. The Government replied that there was no big deal and the proposed legislative control will render many people unable to do business or make a good fortune, and even jobless. Honestly speaking, I was surprised at such a remark because as I have said earlier, respecting personal privacy and making a fortune on privacy are separate issues. The Government should know clearly which side to take.

Regrettably, we noticed from the discussion on the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill) that the basic principles and stance of the Government have remained changed. People may ask why this Bill would be formulated. As many colleagues have mentioned in their earlier speeches, this is attributable to the worsening situation. The Octopus Rewards Limited has sold personal data to make a fortune. It has openly sold personal data to many people, who then resold the data time and again. I often receive different calls or emails, which are untraceable, as our personal data may probably have been transferred for dozens of times. It is impossible to trace who have infringed my privacy rights. President, of course, I am not the only one who has been harassed. I believe many colleagues in this Council and Hong Kong people have also been harassed in the same way.

In view of this, the Government suggested to introduce an amendment to step up regulation in this regard and include some penalty provisions. President, we welcome the relevant amendments and the fact that the Government has spelt out the legal sanctions imposed against the unauthorized use of personal data to make money. But the question is, are the amendments sufficient? Can they fully, completely and reasonably protect privacy? The fact is that they cannot. Why is that so? The answer is that the Government has still maintained an

attitude of "profits overriding privacy". Why do I accuse the Government of letting "profits overriding privacy"? Because it insists on promoting a system which requires an ordinary citizen to request an organization not to sell his name for profit, but not enforcing legislative control to prohibit the relevant organizations from making a profit on people's privacy, unless with their consent.

President, these two approaches are significantly different. As other colleagues have mentioned earlier, the so-called "opt-out" and "opt-in" mechanisms are in place. The difference between these two mechanisms is that either you have to formally request the person who intends to make money from your privacy not to do so, or the latter has to seek your approval before making money on your data. They are different. Therefore, President, we hold that the stance of the Government is still totally illogical. Many people are very busy. If a person is required to keep a clear record of who and who have made money on his privacy, and record the date and time when they inform, by phones calls or emails, the relevant party not to use his privacy to make money, it would bring great nuisances to him. Worse still, he would unnecessarily bear additional mental burden. Why does such logic prevail? Therefore, although I consider that the amendments have made slight improvements, they remained totally illogical and are therefore unacceptable.

In this connection, I must point out that we completely agree with the various amendments proposed by our colleague Mr James TO. In fact, during the deliberation of the Bill, we had argued time and again with the Government on the justifications of Mr TO's amendments. And yet, as I said earlier, the Government insisted that "profits overriding privacy". What is more, it has all along turned a blind eye to the amendments proposed by the democratic camp. President, the biggest problems about the opt-out mechanism proposed by the Government lie in the principle and the unnecessary mental burden to be borne by the person concerned. Mr James TO's approach is just the opposite and, President, this is why we consider it logical. A profiteer or business operator should not presume one's silence as consent. Rather, they must obtain the written consent of the data subject before using the data to make money. President, the advantage of this mechanism is clear to all and everyone knows which is better.

Furthermore, President, another amendment is concerned with the grandfathering arrangement. According to the amendment proposed by the

Government, it has now tightened up the control, but business operators can continue to use the personal data obtained before the enactment of legislation to make money. President, I must point out, legally speaking, the law does not have a retrospective effect, which is correct. However, once the law is passed, all scenarios must be covered and no exemption should be granted. For example, though you have made mistakes, you are allowed to proceed further after the enactment of legislation. President, what kind of logic is this? To put it simply, despite the mistakes made in the past, once the law is passed, should one stop making any more mistakes since then?

President, more important still, even if the law is luckily passed today, it will take some time before it actually takes effect. Will this encourage those who make money on the personal data of Hong Kong people to ride on the "last train"? They can rest assured that the personal data collected within these two months can continue to yield return in the future as the passage of the law has no implication on them. President, how come there is such an ordinance?

Such logic is unacceptable from the perspectives of Members, the general citizens or public officers. In other words, mistakes are not only allowed in the past, but also in the present. This is tantamount to granting exemptions to facilitate the business operators, which is totally disrespectful to privacy. Therefore, President, I really cannot accept the Government's amendments. Rather, we fully support Mr James TO's amendments.

However, President, a paradoxical point is that later, the President will instruct us to have a joint debate on the amendments. According to the meeting procedures, we will first vote on the Government's amendments. If the Government's amendments are passed, we cannot vote on Mr TO's amendments. President, I am sure that this arrangement complies with the procedure, but I have not carefully examined if this is logical as Members will be placed at a difficult position. If we vote down the Government's amendments and Mr James TO's amendments are struck down under the separate voting system, we would have done something very bad to Hong Kong people. This is because, should the Government's amendments fail to get passed, the present drafting of the Bill is even more unfavourable to the protection of privacy of Hong Kong people, we are therefore facing a genuine dilemma.

President, I hope that I have made myself clear. In principle, I fully agree with the viewpoints of Mr James TO, and we have reiterated this time and again during the deliberation. We are nonetheless looking forward to hearing the Government's stance on the issue raised by me earlier. The most important of all is whether the Government will make a serious and solemn undertaking during the Second Reading of the Bill, that is, to conduct a comprehensive review after the enactment of the Bill within a certain period of time as proposed by Mr James TO. If the Government has really made such an undertaking, we will certainly reconsider our voting intentions towards the Government's amendments.

Therefore, President, I do not want to keep you up in the air, but I merely want to first listen to the Government's reply. I hope that the Government has heard and understood the seriousness and principle of the issue under discussion. I hope that the Government will not side with business operators but put itself in the shoes of Hong Kong people, and formulate a legislation which genuinely respects and protects privacy.

President, last of all, I must highlight the right of prosecution. As Members have mentioned earlier, we certainly agree that before there is class action, sufficient power should be given to the Privacy Commissioner for Personal Data (the Commissioner) to institute prosecution on behalf of Hong Kong people whose rights have been infringed. It is not a must to institute prosecution, it is desirable to have such a right, as the Commissioner has suggested. President, I nonetheless hope that the Commissioner can at least put in more resources to institute prosecutions on behalf of Hong Kong people, which can then exert some deterrent effect on business operators. The reason is the Bill, in its present form, does not have any deterrent effect. Business operators can do whatever they like, thinking that the law does not have any legal effect. This is precisely one of the reasons why this legislation has all along been regarded as a "toothless tiger".

President, if the Government really has to take on board the recent suggestion of the Law Reform Commission of Hong Kong and establish a class action system in Hong Kong, I hope that the class action provided can properly deal with the legal effect brought about by the infringement of Hong Kong people's basic privacy right under the PDPO.

President, in this connection, I hope that when the Government speaks, it can respond positively to the questions on prosecution and legal proceeding. We certainly welcome the Government to make an undertaking at this stage to set Hong Kong people at ease; as regards our voting intentions of the Government's amendments to be proposed later during the joint debate session, a decision will only be made after listening to its speech. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, a point of order. Are we in committee of the whole Council or the Council?

PRESIDENT (in Cantonese): We now resume the Second Reading debate of the Personal Data (Privacy) (Amendment) Bill 2011.

MR LEUNG KWOK-HUNG (in Cantonese): I am not sure which rule of the Rules of Procedure I should invoke. While Rule 17(2) is concerned with the number of Members present in the Council, Rule 17(3) is concerned with the number of Members present in committee of the whole Council.

PRESIDENT (in Cantonese): We now resume the Second Reading debate of the Personal Data (Privacy) (Amendment) Bill 2011. Do you wish to point out that a quorum is not present?

MR LEUNG KWOK-HUNG (in Cantonese): Should I invoke Rule 17(2) or 17(3)?

PRESIDENT (in Cantonese): You should invoke Rule 17(2). Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please speak.

MR LEUNG KWOK-HUNG (in Cantonese): President, good morning. After listening to Mr Ronny TONG's speech just now, I considered that the views that we had expressed at the committee meetings were fruitless. This is because the points which he just highlighted have previously been raised by the majority of Members. He is merely being repetitious. Why do Members have to keep repeating what they have said? This is because the Government makes no changes, and there are reasons for the Government to be so rigid. If Members have studied Western history, they should know that the reason behind is mercantilism. Although mercantilism is certainly not the best description of the situation, the scenario is actually mercantilism as the commands of businessmen are always obeyed. Members should not misunderstand. I am not saying "商朝人" (soeng1 ciu4 jan4) (meaning people of the Shang Dynasty), but "商人" (soeng1 jan4) (meaning businessmen).

President, I wonder if you have read the following passage, "While a situation gives a particular outcome, laws follow consistent principles. Only those who have a serene can see what is coming from one small clue. Moon halo indicates wind and a damp plinth foretells rain, which is known to all. Yet, changes in human matters and the causal relations between the law and the developing trend are so abstract and remote that they are very difficult to understand. How can we compare such unpredictable changes with what happens in heaven and earth? Why even men of talents and virtue cannot tell? This is because their thinking has been influenced by their love and hate, whereas their behaviour has been shaped by external advantages and disadvantages". This is the first paragraph of Bian Jian Lun.

President, why is prediction not possible? SU Xun said that while astrological changes are not difficult to foretell, human changes are unpredictable. He asked: Was the emperor not aware of this? The emperor was certainly aware of this, right? Why did he fail to see then? "Why even men of talents and virtue cannot tell?" This is because their thinking has been influenced by their love and hate. In other words, do I like it? Like it or not? "This is because their thinking has been influenced by their love and hate, whereas their behaviour has been shaped by external advantages and disadvantages." The key is therefore to make money. Is this not precisely what the Government is doing?

Although we can now fly to the moon and foretell such unpredictable changes, human nature is still beyond our prediction.

The principle suggested by Mr Ronny TONG is, honestly speaking, tantamount to "mothers are women but women are not necessarily mothers". After saying that "mothers are women", and followed by "not all women are mothers", the government officials thought that they were invincible and well-learned. Let me cite another example. The worst part of mercantilism is granting exemptions for a few months after the passage of the Bill. What is the reason for this? This is totally unacceptable. It would be disastrous if the same approach applies to handling economic issues. This would mean that short selling, which will be prohibited in the future, is allowed within the first two months after the relevant law comes into effect. This will certainly cause chaos and encourage undesirable expansion. Although the inappropriateness of a certain act has been pointed out, a grace period has nonetheless been provided. I have never seen a government like this.

Take the "touch-base" policy as an example. Given that the Government had provided a two-month grace period when the "touch-base" policy was introduced in the 1970s, immigrants immediately flocked to Hong Kong. Even if the People's Liberation Army was deployed to station at the border, it would not help. This is inexplicable because this is again attributable to the flaws of our system and that of the Executive Council. President, you have already heard too much about the anonymity of the Executive Council. Some people said that as all Directors of Bureaux and Secretaries of Departments have joined the Executive Council, the Government could definitely secure the majority of 19 votes, while the remaining 14 or 15 votes were in the hands of other people; the same scenario also applied to this Council. How can anyone oppose the Executive Council? Mr LEUNG Chun-ying is actually playing some tricks. It is still possible at the moment, but possibly the business sector will raise objection, and the Chief Executive will have to give an account of the opposition.

President, this great loophole illustrates the insincerity of the Government in proposing the present legislative amendment; it just fails to give a good reason. Nowhere else in this world would do something like this. A bottleneck has been formed. As a result, after the enactment, the interests of ordinary people will be massively exploited in a systematic manner because the past misdeeds will not be rectified. Why should past misdeeds not be rectified? Because the law does

not have any retrospective effect. I certainly understand, but I cannot help feeling very anxious. It is reasonable to stipulate that after the passage of the Bill, a person will not be found guilty of the wrongdoings that he has done before the law comes into effect. However, the inclusion of the proposed two-month grace period has conveyed a clear message that people should hastily carry out their wrongful deeds, so as to build up a database, and they will not be prosecuted, because the Chief Executive has empowered people to breach the law within the two-month grace period.

President, what is our view on people's privacy? It is seen as a milk cow or a juicer. Our information on the Octopus cards have been seized without getting us informed. I receive 10 phone calls every day, asking what kind of job I am doing and whether I need to borrow some money. I tell them I am a banker and need to borrow \$200 million, and they immediately hang up. If I tell them I am a Legislative Council Member, they will not hang up because they may say that even Legislative Council Members have to "flee". They may have to "flee" after the new government takes office. President, I receive 10 phone calls from the four major banks every day. Am I someone with high prestige? I have not asked any of them to call me. I think they call to lobby me, but it turns out that they just ask me to borrow money from them. So, I simply tell them I need to borrow \$200 million to scare them away.

Given that the data subjects have their personal information seized without being informed, how can you ask them to raise objection when they hardly know what has happened. Buddy, what is the requirement? It should be the other way round. Without the consent of the data subject, the data concerned should all be dumped in the dustbin. President, the logic is pretty simple and you should be able to understand. If you were sitting on this side, you would also speak like me, right? What is wrong with the Government? My data has been used without my consent, why not require the other way round, all my data should be dumped without my consent. Is this not possible? Why do I need to strive so hard to get back my inherent right? This is not possible. The entire legislation actually encourages business operators, who seize our personal data to make money, to continue with their evil acts.

President, on the privacy issue, I have made some slight efforts. As for Mr James TO, I am not licking his boots, he may not have done very well. Regarding the interception law which was enacted it was passed, right?

The legislation has suddenly been put in an "old fridge" as the new government will soon take office. This is an ordinance which was solemnly passed in the Legislative Council Chamber — that Chamber has now been converted for other uses. How can the Government freeze and shelve the legislation. Perhaps Mr James TO may not know, this is actually the so-called "cold-treatment" adopted by officials in the Mainland. Just brush the requests aside and shelve them, what can you do about this situation? Freezing one's request is a common approach adopted in the Mainland.

The Government has adopted a "cold treatment" to deal with these problems. When an ordinance is considered inappropriate, the Government will immediately have it frozen, such that it will gradually shrink and vanish in the end. And yet, the present Bill is still hot like freshly steamed rice rolls. It is not grass jelly, a dessert. Though we only sell steamed rice rolls but not grass jelly, the situation is still in a mess.

Let me put it simply. I wonder if the Privacy Commissioner for Personal Data, who is paid by his boss, has shouldered his boss's worries. The "boss" here does not refer to the emperor, but us. We are the boss. Has he noticed this glaring loophole? Has he realized that we have kept on making mistakes after mistakes? Is he aware that the database to be developed in the coming two months is only made possible by keeping Hong Kong people in the dark and there is no way we can seek compensation? If I stupidly seek judicial review, I will again lose some \$1 million. Am I right?

President, under this regime, people have to make stupid attempt to seek judicial reviews. If the Government loses, we can have our rights back; if it wins, we will have to fight again to get our rights back. President, we were once asked by a person of great wisdom if "Hong Kong is ruled by the Judiciary"? Has our separation of powers deteriorated into attacks among the three powers? No, this is not the case, but the way we enact our laws is outrageous. If laws are enacted in this way, we will lose our patience and have to seek judicial review. This can, to a certain degree, be deemed as lodging a complaint. Honestly speaking, President, first of all, we will receive a good beating before we can see the judge. When I applied for a judicial review, the Legal Aid Department (LAD) asked me to pay \$660,000 first. Do you agree that this is a good beating before taking further steps? After I entered the LAD, the staff said, "Mr LEUNG, it is the right time you come." I immediately got a good beating. "If

you are willing to pay \$660,000, I will help you." Mr CHAN Kin-por is not present at the meeting now. Since he is the Chairman of the Legal Aid Services Council (LASC), I have thought of seeking his help — the Chairman of the LASC should be Mr Paul CHAN, who is sitting beside Mr CHAN Kin-por.

Therefore, Dr Margaret NG said, "If you genuinely care for the interests of Hong Kong people, you should not jump the queue. The provisions concerning legal aid have been carefully fine-tuned by Members and submitted for endorsement." The food is ready to serve, but the Government has not taken any action. Now the hot food has become cold desserts.

President, I am not familiar with SU Xun's articles, but since it is so boring here, I have made use of the time to read *Gu Wen Guan Zhi*. I did achieve not achieve, sorry, I should say I learn something. The first paragraph of *Bian Jian Lun* (meaning to distinguish the good and the bad) written in the Song Dynasty best describes the existing and future governments.

President, in my opinion, the legislation tabled at this Council today has truly reflected our helplessness. This is the so-called "chicken rib theory". The Government handed us something, saying that it is a chicken. But, in fact, on the plate are the head, neck and buttock of a chicken. When it asked us if we wanted to eat, we said no. It went on to say that there should be a chicken leg, but someone took it. So, all you (Dr Margaret NG and Mr James TO) can eat are nothing but the buttock and rib of a chicken. Take it or leave it, you are doomed to die.

Although Mr James TO had worked hard to secure the passage of a bill in this Council, the bill was subsequently frozen. After I won the case against Donald TSANG, who issued an executive order to replace the legislation, the legislation was again tabled at this Council. I think Dr Margaret NG would never forget about the legislation as she has treated the relevant amendments like her "babies". Mr LAU Kong-wah, on the other hand, had spoken sternly that, "We cannot let them pass anyway. If they were passed, they would condone the criminals." How could he say something like this?

President, the writing *Bian Jian Lun* best describes the situation. We have tried very hard to make the legislation looks more reasonable, but frankly, we are facing lines of staunch defence. They are nonetheless not created by members

of the public, but by public officers. Every time, we have to fight fiercely to inch up. Worse still, in order to get to court, we have to risk being beaten up again and again. Do you think this is terrible?

President, I have nothing special to say, but I do want to tell a story. Someone says, "There is nothing wrong with my house. Friends who have come to examine it also said that it is perfectly fine." If I am a thief, but my friends do not consider that I am a thief, can I claim that I am not a thief? I am now 56 years old but my friends said that I look like 46. Will I really think that I am only 46?*(The buzzer sounded)* Our incumbent Chief Executive is terrible, so is our Chief Executive-elect

PRESIDENT (in Cantonese): Your speaking time is up.

MS CYD HO (in Cantonese): President, this amendment bill is triggered by the incident where the Octopus Holdings Limited sold its Octopus cardholders' personal data to other commercial marketing companies, which has aroused public outcry. In fact, the profit involved is only some \$40 million, but some of the companies have arbitrarily sold the cardholders' telephone numbers for profit. This has caused great nuisances to many people, and we therefore do not object to this amendment.

On the question of whether an "opt-in" or "opt-out" mechanism should be adopted, some improvements have been made and a proactive "opt-in" mechanism has been introduced. It requires that members of the public should reply within 30 days, beyond which their request will not be entertained. Even if the legislation is enacted, education for consumers should continue. Why? Because many consumers may accept the transfer of their personal data in return for some impractical rebates, negligible money rewards or rebates which can hardly be used after saving for quite some time. And yet, in return, they would receive endless telemarketing calls.

Therefore, even if the legislation has been enacted, we still need to educate the public by explaining clearly that they should not be lured by those negligible rebates and accede to the request of certain commercial companies to freely transfer their personal data at will or make money out of it. Of course, if a

consumer makes an informed decision and is willing to withstand some 30 calls a day, asking them to borrow money or patronize beauty parlours in return for some negligible rebates, there is no problem. This is, after all, their choice.

President, apart from the conflicts between the business sector and the personal rights of individuals, another point about this amendment bill which warrants our attention is whether the Government is subject to the regulation of the Personal Data (Privacy) Ordinance when it exercises its power. This is because the basket of amendments has significantly expanded and extended the exemption granted to the Government as a data user and a major collector of personal data.

In fact, the Government has the greatest capacity in collecting personal data. If we apply for identity card, driving license or library card, we are often required to supply sufficient personal data to the government department concerned. Also, parents are required to submit a great deal of data to the Student Financial Assistance Agency when applying for financial assistance, travel subsidy or textbooks and stationery grants. This is why we had great reservations when the Security Bureau introduced the smart identity cards some time ago. We had closely monitored the Government and requested it not to arbitrarily use the data stored on the smart identity cards. Nonetheless, we notice that the Government has enjoyed comparatively greater exemptions under the baskets of amendments, and it can be exempted from the provisions of Data Protection Principles 3 and 6. For example, if a person (that is, an ordinary citizen) wants to know the data that is held by the Government, the Bill has provided an expanded exemption provision in section 20(3)(ea) to allow the Government to refuse a data access request "under this or any other Ordinance".

During the deliberation, we have spent long hours examining the broad meaning of "any other Ordinance". Take the Places of Public Entertainment Ordinance, which has been discussed earlier, as an example. Mr LEUNG Kwok-hung may wish to know why the Food and Environmental Hygiene Department rejected his application for a place of public entertainment license, and consequently, he could not give a speech or tell a story in public places. In fact, the Government can quote the expression "any other Ordinance" and refuse to disclose to Mr LEUNG Kwok-hung the reason for rejecting his application, that is, for fear that he might incite other people into action. During the

deliberation, we requested to delete the expression "any other Ordinance". But whenever we come to this point, the Government will reject on security grounds, stressing the importance of case investigation. The conclusion is that a more concrete general regulation will be made to specify the right or restriction of data access.

Given that the Bill will certainly be passed today, we have to look at the kind of information to be included by the Privacy Commissioner for Personal Data (the Commissioner) and the authorities in making the general regulation. I therefore would like to ask the Deputy Secretary to advise when and how the general regulation will be made and the details of it when giving a reply during the Second Reading debate. In case the Government has taken excessively long time to make the regulation without specific justifications, this may give rise to another case where the legislation is used to resolve political problems.

Another example is section 59A(2), which has also provided an extraordinarily broad exemption from the provisions of Data Protection Principle 3. In other words, even if the Government has caused serious physical or mental harm to another person, it can still be exempted from the provisions of Data Protection Principle 3. Another example is section 63C(2), which provides that in case Data Protection Principle 3 is not complied with in a life-threatening situation, this provision can also be used as a defence on the ground of emergency. All these seek to open the door for the Government.

The Government is also most capable of infringing on privacy and abusing public power. Abuse of personal data by the business sector will only bring some annoying and frivolous calls. Sometimes, we rush out of the Chamber to answer calls which we think are of great emergency; the person who calls will say, "Ms HO, do you need to lose weight or have a fair complexion?" President, we really need to put on some sun block lotion under the lights here and think about how to get a fair complexion. Abuse of personal data by the business sector may affect our daily living, but the Government's abuse of public power and its manipulation or transfer of personal data collected among government departments to enhance its efficiency in monitoring and interfering people's living may bring disastrous consequences, and this situation is even more worthy of Members' careful follow-up actions.

Another point which I wish to draw Members' attention to is the power of the Commissioner. Apart from preventing commercial companies like the

Octopus Holdings Limited from infringing on people's living, the basket of amendments also include the implementation of some previous recommendations made by the Commissioner. They include an expansion of Commissioner's power, which seeks to enable him to execute his functions more effectively. We do agree with some of his functions, though they are stating what is already obvious. Let me give an example. It specifies that the Commissioner can deploy resources to promote public education, so that people can have a better understanding of the importance of personal data protection and how it should be protected. While these amendments are like "mothers are women", we still support them because according to the Government, the Commissioner is not only tasked to promote public education, broadcast TV advertisements and publish leaflets, a considerable sum of money and resources will have to be deployed to inform various organizations how to act in strict compliance with the Ordinance. We therefore render our support to the amendments.

Nonetheless, we are very sorry to say that we oppose some expanded functions of the Commissioner, on which relevant amendments have been proposed by the Government. One of the examples is the Commissioner's power to exchange information with organizations outside Hong Kong. We are very concerned if these organizations have formulated comprehensive legislation on protecting person information privacy and have established a statutory body for such purpose, as in the case of New Zealand. No, they have not. For organizations outside Hong Kong, we refer to Mainland as well. As Members may be aware, the Mainland performs poorly, or I should say badly, in the protection of human rights. Should the Bills Committee miss this point and let the Bill get through without raising any objection to the relevant provision, the future Commissioner can then exchange personal data collected in Hong Kong with organizations outside Hong Kong (including those of the Mainland) under the revised ordinance.

Fortunately, the Government has agreed to remove this point to the effect that the Commissioner can only exchange information with overseas organizations having laws and statutory bodies similar to those of Hong Kong. Yet, we still feel worried as the Mainland may enact a privacy protection law at any time, thereby enabling it to have a similar law with us. Given that there is no way we can interfere with the legislative procedure of the Mainland, except for the Hong Kong Deputies to the National People's Congress, therefore no matter how the legislation is amended, it is essential for our society and people to remain vigilant at all times in order to protect our own rights.

The last major area which I would like to talk about is concerned with the balance among the protection of personal data, the openness and transparency of information and the archives law. As a protection of personal data, the Government has provided that all data collected is prohibited from access, unless the request is put forward by the data subject, the person who provided the data. Then, the next thing we have to think about is whether public officers have privacy. Can public officers escape public scrutiny on the ground of privacy protection? Can statutory bodies or the Executive Council, for example, refuse to disclose their minutes of meetings on the ground of privacy protection? Given the substantial power held by these statutory bodies in deploying public resources as well as their implications on policies and legislation, an attempt by the appointed officials of these bodies to refuse the disclosure of their minutes on the ground of privacy protection, though supported by the Government, would have evaded the lowest degree of public scrutiny. With regard to section 63D concerning the transfer of records, plenty of discussions have been held by the Bills Committee and the Government has also proposed some relevant amendments. I will further elaborate when we discuss the relevant provisions.

Here, I must highlight the need to follow up on the archives law and the law on access to information, so as to prevent the Government, the largest data holder, from refusing to disclose records which the public is entitled to know on the ground of privacy protection. We are also aware that the Chief Executive-elect Mr LEUNG Chun-ying has promised people who are concerned with the archives law, through certain channels, that he will explore the possibilities of enacting the archives law. This has nothing to do with the framework of five Secretaries of Departments and 14 Directors of Bureaux, and there is no need to carry policy research as the Archives Action Group has already prepared a bill. Thanks to the efforts of various parties over the past two years, we now have a more matured and better understanding of archives. Although we still have to go through a public consultation process later, there is no need for the archives law to wait for the implementation the framework of Secretaries of Departments and 14 Directors of Bureaux. What is more, the newly created Deputy Chief Secretary for Administration is not responsible for archives matters, so there should not be any problem.

Thus, I would like to put down on record that while protecting the privacy of personal data, we must also strike a proper balance so that public officers will also be subject to public scrutiny. We therefore consider it necessary to

expeditiously enact the archives law and the law on access to information, and there should be no delay.

Thank you, President.

MR JAMES TO (in Cantonese): President, the present amendment to the Personal Data (Privacy) Ordinance is an important amendment made to the principal ordinance for the first time since 1996. As people have been outraged by the Octopus incident, the Government can no longer move in slow motion, and it has to expeditiously identify a solution to address the indignation of the public.

We have actually tolerated harassments such as direct marketing for too long. I do not intend to completely wipe out the direct marketing industry for this is a normal business activity. The question is, as Mr Ronny TONG has said, do they have the right to harass other people just for the sake of making money? Or, should their targets tolerate such harassments? The premise is whether the data subjects have provided the data for marketing purpose under a fully informed and conscious condition, and are willing to have the data sold to other parties. Or, as some Members have said, the data subjects will give their consent in return for negligible rewards.

In my opinion, different people have different standards. Perhaps some people really do not mind and do not attach much value to their privacy. They do not think there is any problem selling their data to different buyers so that the latter can call for marketing purpose, so long as they are given some "rewards". It is also possible that a person, who also engages in direct marketing, feels sympathetic towards other members in the trade and thus unselfishly provides his personal data to create more job opportunities for other people, including himself. It is therefore a very complicated issue and the standard varies among people. Yet, the most important point is that all people should enjoy the same right and opportunity to consciously empower another party to sell their data, instead of having their data sold in an uninformed or unknown manner. This is what people find the most outrageous.

Some colleagues have also talked about their personal experiences. What impressed me most was my trip to Manila together with family members of the victims and the injured in the "823 hostage-taking incident" which happened in Manila last year. Since I had to keep in touch with many foreign and local

reporters as well as my assistant, I could not switch off my mobile phone. I had to provide further information at any time, and some appointments could only be confirmed after we had arrived in Manila. It was most annoying and outrageous to have incoming calls when observing silence or having meetings with the Minister of Justice. This was really too agitating because the caller usually asked, "Do you have the problem of falling hair?" How would you feel if such calls came when you were comforting the tearful family members? Money is another issue. It was agitating that these incoming calls had cost me a lot of money, and I believe Members have many similar experiences.

The difficulty we are now facing is that plenty of personal data has been kept by a number of large-scale organizations, which have carried out systematic research to see how the data can be used to make profit. This is not necessarily a negative remark to accuse the wrongdoings of these organizations, which is not my intention. However, there is no doubt that business operators will make use of the data collected to, say, carry out profiling, to see which kind of data is suitable for marketing or the production of packages for sale to President or to me in view of the impending Legislative Council Election to be held in September, so that we can approach voters by sending text messages or making phone calls in due course. Perhaps some people are exploring this kind of business.

Given that some organizations may have consciously and systematically deployed substantial manpower and appointed people of high intelligence to practicably examine how the data can be made use of, we cannot help but ask: What should we handle the great deal of data in hand? One possibility is, as Mr LEUNG Kwok-hung has said earlier, to delete all data and collect afresh from the public in accordance with the new statutory provisions, and process the data once they opt in. And yet, this involves a sharp conflict and I notice the large gap between the "opt-in" and "opt-out" mechanisms. Originally, the Government proposed to adopt the "opt-out" mechanism in the Blue Bill, which means that no indication of objection is taken as permitting the use of data. The data can even be used in whatever way provided that there is no indication of objection. We nonetheless have strong views about this, and hope that the Government can be more reasonable. Although I am not sure if the Government has reasons to justify the proposal, we support the adoption of the "opt-in" mechanism. And yet, the Government preferred to take the middle-of-the-road approach and adopted the abovementioned "non-opt-out" approach, which means the "opt-not-to-object" mechanism.

For this opt-not-to-object mechanism, we must discuss the detailed arrangement. What is meant by opt-not-to-object? Does it mean people should respond consciously to a letter or an email indicating the decision to opt not to object, or should the respondent be asked over the telephone if he agrees and does not object? It should be noted that there is a significant difference between oral and written reply. Regardless of whether a person is required to sign or simply mark a tick on a piece of paper before sending it back, or to write something or indicate his choice via an email on the Internet, it involves a relatively thorough thinking process, as the respondent should have carefully read the content. The details are recorded in black and white, and the respondent can spend as much time to read it as he wishes. However, if an oral reply is to be made, some problems will arise. Firstly, the recording, even if there is any, does not do any help because it belongs to the organization concerned but not the consumer. Normally, a consumer will not record immediately after he receives a direct marketing call, unless he intends to set a trap. Secondly, a respondent may not listen attentively to the caller's words but just unconsciously answers "yes" when being asked "yes" or "no". Although the caller might have mentioned some detailed conditions, the respondent may not have much impression as the words have simply disappeared like smoke. Therefore, it is two completely different approaches to reply in writing and by email or to give an oral reply, and the attitude adopted by the respondents when making a choice will also be different. To put in simply, it would be unfair to members of the public if they are "sold" through verbal communication.

For enterprises which have kept a great deal of data, if they are given a transitional period — enterprises of a larger scale will enjoy greater competitive edge during the transitional period — during which the data can be used in similar products and sectors so long as it has been used once, I would in no way believe that these enterprises will not use the data. This has created a very big loophole. In the course of amending the Personal Data (Privacy) Ordinance, we have reluctantly accepted the arrangement of not requiring consumers to opt-in again. Honestly speaking, this is the greatest allowance that can be given, having considered the historical factors, as well as the approaches and difficulties encountered by those business organizations. I nonetheless consider it unfair to give those enterprises an additional period of time to plan, organize and deploy their resources to abuse the previous regime for another period of time.

Furthermore, is there any way to prevent anyone from using the data to make calls? Is there any way to stop further harassment if people so wish? The Government has not addressed our concerns in this legislative amendment exercise, which probably requires a great deal of efforts and resources. But the Government has not even suggested any channel. For example, the Privacy Commissioner for Personal Data (the Commissioner) has proposed to establish a centralized "Do-not-call" mechanism, which is designed for people who do not want to be disturbed or do not wish to have any of his phones receiving such calls. If I travel abroad, I will use a new phone number. Except for telephone surveys, which are inevitable for the sake of conducting election polls, this new number would not be disclosed to anyone. Nor would it be produced for the application of bank credit cards or reward schemes, fearing that someone may call. It nonetheless does not matter if the caller calls frequently to other numbers.

Therefore, if the centralized "Do-not-call" mechanism is established, we can at least rest assured that a particular number will not receive such calls, and can be used for communication in case of emergency. If my mother is unfortunately sent to the Intensive Care Unit, my sister can reach me on this number, and my secretary can also call this number in case of emergency. I can therefore rest assured that I will not receive any frivolous calls. On the other hand, many telephones of hospitals are blocked. When my wife entered the hospital to give birth some time ago and called from the hospital, I noticed that the calls were sometimes blocked. That is why I have to answer all blocked calls. Not everything is under control. We only know that they are marketing calls after receiving the calls. However, the Government was reluctant to establish the centralized "Do-not-call" mechanism. Given that the Government has established the opt-out mechanism for nuisance calls not made by persons (that is, computer- or machine-operated pre-recorded calls), why similar centralized "opt out" mechanism is not established for person-to-person telemarketing calls?

I now propose an amendment to provide for a tracing arrangement in the future. This is not about retrospective effect, but seeks to empower people to ask how the caller obtained the relevant data and whether the data subjects' consent has been obtained when they receive telemarketing calls. If the caller has obtained the data subjects' consent, he should provide the evidence when such consent was sought. If it turns out that the caller has obtained the data from someone else, he must disclose the identity of the data provider. First, he is not

allowed to call again, thereby stopping such calls right at start. Then, the caller has to disclose the data source, so that the data subject can verify if he has provided the data. This is how tracing works. Although tracing requires substantial resources and manpower and is pretty troublesome, we can at least have an opportunity to opt out. Yet, the Government has refused to accept the Commissioner's proposal to establish such a mechanism. Since we will have ample time in the Committee stage later, I hope that colleagues will explain why they do not agree with the proposal.

President, I have prepared a pile of information about Mr WONG Kwok-hing's "handling the case in a high profile manner at first but letting it off lightly" and intended to spend a few minutes on this, but forget it. I have already spoken for too long. I just hope that Mr WONG Kwok-hing will remember what he has previously said. He has indicated the wish to establish an "opt-in" mechanism. Given that he has spoken with determination, I urge him and the Hong Kong Federation of Trade Unions to seriously consider supporting my amendments to be proposed in the Committee stage, which seek to improve the relevant regime. Do not accuse me of making slanderous remarks, and say something like "monkey face" or "having only a head but not a tail". I will not say anymore on this, but just hope that he will support me.

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

MR ALBERT CHAN (in Cantonese): President, I think that it is time for lunch because it is now 12.30 pm.

PRESIDENT (in Cantonese): Lunch hour starts from one o'clock.

MR ALBERT CHAN (in Cantonese): One o'clock. Okay.

President, I know that the Select Committee to study the West Kowloon incident is still having a meeting and dozens of Members have left to attend this meeting, therefore resulting in a lack of quorum in this Chamber. According to my practice, I will request a headcount. And yet, Members who attend the

Select Committee meeting told me that they have to discuss a major issue today concerning the leakage of information, so I am not going to request any headcount in the coming 30 minutes — unless in case of emergency.

President, I originally have not prepared to speak because I learn that many Members intend to speak on the issue during the Second Reading debate. However, since dozens of Members have to attend another meeting and are unable to speak during the Second Reading debate, I hope that they can, after the conclusion of the Select Committee meeting, join us later at the Committee stage and express their views on the principle, content and amendments of this important Personal Data (Privacy) (Amendment) Bill 2011.

President, People Power is extremely concerned about the handling of privacy. In my view, in the capitalist society of Hong Kong which practices *laissez faire* and upholds the governance principle of the so-called "big market, small government", people's privacy has often been infringed upon. I guess all people of Hong Kong have often received nuisance calls either at home or when they are in overseas countries, in the United Kingdom, the United States of America, Canada, Australia, New Zealand and so on. There are different kinds of nuisance calls. While some ask you to borrow money, some promote certain investment products. If they know that you are a property owner, they may even ask if you are interested to sell your property — there are calls of various kinds.

President, our district office receives different kinds of complaints on nuisance calls almost every week. The most common and prominent complaints are calls from debt collection agencies. Basically, these debt collection agencies are entrusted by different parties, such as banks, quasi small-scale finance companies suspected to have triad background, telecommunications companies or pay television companies. The list is inexhaustive.

As Members may be aware, these debt collection agencies may act and speak like triad members when collecting debts. Even though the debt involved is just a few hundred dollars, the borrower will have to live in fear or even in a nightmare. Debt collection agencies entrusted by better financial institutions or banks may adopt relatively milder approach, but they still act more or less like triad "loan sharks". This is because they may not be able to recover the debt if they do not act and appear like triad "loan sharks".

However, when you ask them how they get your data, some would reply in a more specific and formal way, "I come to recover debt on behalf of Company A." Some would nonetheless remain silent and give ridiculous answer, "You should know. You should know which company I represent." They really said so. "You know which company I represent." As some people may have borrowed money from a few companies, but the debt collector insisted that "You should know which company I represent", how should the person know? Replying in this way may cause confusion to the person who is being affected or harassed.

What is even more ridiculous — I should not say ridiculous as it is actually the rule or convention — is that the debt collection agencies will ask the debtor to immediately repay all the money owed. The amount may be astonishing. Some people may have borrowed only \$10,000 to \$20,000 from the debt collection agencies, but they are required to repay as much as \$50,000 to \$60,000 at once — which is three to four times that of the debt. I have even heard that the highest repayment was seven to eight times that of the debt, but that case happened more than a decade ago.

Many barristers present in this Chamber should know clearly that in Hong Kong, any loan which has been outstanding for more than six years without seeking court judgment or remained unsettled cannot be recovered six years later by way of legal action in accordance with the law. And yet, the debt collection agencies will continue to harass the debtors. You may get mad when your personal data has fallen into the hands of organizations which are not supposed to have such data, which subsequently passed your data to other organizations to make harassments.

Worse still, those debt collection agencies do not only coldly and recklessly harass the borrowers, but also the guarantors, no, the referees. As Members may be aware, a borrower has to fill in a form in which the particulars of three referees must be supplied. Many people usually fill in the particulars (including address and telephone number) of their father, brother or uncle. When the debt collection agencies try to recover the debts concerned, they often harass those three referees.

I guess the Office of the Privacy Commissioner for Personal Data should have received many similar complaints, but nothing can be done in the end. This is because according to the existing regulations, the relevant data

When the loan was tendered, the lender has stated that it has the right to recover or entrust other parties to recover the debt. Therefore, both the disclosure of data and the entrustment are permitted by the law.

It is certainly a breach of privacy if a debt collection agency displays a borrower's particulars in the lobby of a building or on the street. And yet, the debt collecting activities conducted towards the referees in particular It is another problem if a referee is not aware that he has become a referee. Before the borrower put down three names as referees, he has not obtained the consent or acknowledgment of these people, who will be subject to harassments thereafter.

A debt collection agency might harass a borrower this year, but then considered it too troublesome to do so in view of the small amount involved, it thus stop taking any action after some time. When the borrower thought that they were free, the harassments resumed one year later. This is because sometimes the financial companies might separate the borrowers' data into small batches I am aware that their cases might be sold at a certain stage.

I learnt that, in 1997, a major consortium in Hong Kong had sold its outstanding loans involving owners of negative asset properties to another company after repeated failures to recover the debts. This had set off a new round of debt recovery action and the plight of the borrowers concerned immediately became very miserable. They were so frustrated and scared that they would rather dig a hole in the ground and hide. The pain that they had suffered is beyond our imagination.

Let us imagine. Many years ago, the wealthiest property developer in Hong Kong failed to recover some longstanding debts and negative assets. While it could have recovered the outstanding debt until the borrowers go bankrupt in accordance with the law, it did not do so. Instead, it sold the entire debt to another company after a certain period of time. The latter company may adopt new tactics — it is profitable if the money owed can be reclaimed as an individual debt may worth millions of dollars — if calculate on the basis of the actual debt owed in legal terms. Therefore, the privacy of Hong Kong people has actually been abused to the greatest extent by companies owned by billionaires who have close ties with senior government officials. These companies are under the shelter, indulgence and tolerance of the Government.

I just talked about how banks made use of your personal data and telephone number to pursue business opportunities. Yesterday, I also mentioned in this Chamber that major banks started to make cold calls due to a drop in business. Their staff have been ordered to I forget who told me that each staff member has to conclude three transactions per week or per day. His target is three transactions, and so he has to ring up his clients. His clients will be busy answering phone calls. Of course, he must contact clients whom he is familiar with. This is why clients receive such marketing calls.

Calls from property agents also seem to be non-stop. In times when there are not many housing projects, it is amazing that different property agencies of the same district have a list of the names and telephone numbers of property owners. You may receive phone calls from the Centaline Property Agency Ltd today, and tomorrow, you get calls from other property agencies. These few property agencies will take turn to call to promote different housing projects, which is pretty annoying to property owners. They will certainly receive a few calls every year, asking if they are interested to sell their properties. How do they get the telephone numbers of property owners? There is no way you can trace the reason. Therefore, personal data has become the victim of economic activities. This is very common and has become an essential part of Hong Kong people's living.

The Octopus incident has made the Government As in the past, the Government only woke up from its dream after the outbreak of major incidents. This is exactly the case of the family tragedies that happened in Tin Shui Wai, which I have mentioned for years. Senior government officials have turned a blind eye to them. When I relayed the issue to Donald TSANG, he always accused me of pleasing the public, boasting and telling lies. It was not until a family of three jumped to death that the Government woke up from its dream and became aware of the seriousness of the problem. President, we have discussed the privacy issue, especially the abuse of personal data by financial companies, for many years. Also, I have relayed the issue to the Secretary for Security and Secretary for Justice, and exchanged correspondences for this cause. I have also criticized the Government, in this Chamber, of condoning those organizations to make use of their authority and power to suppress and threaten the general public.

Sometimes, people may be forced to commit suicide for a mere debt of a few hundred dollars. They have really gone too far. How come a company

owned by a billionaire having an asset of hundreds of billion of dollars will pursue a telephone bill of a few hundred dollars — just a telephone bill, right? The outstanding debt may involve telephone bills which have not been settled for two or three months, or early termination of telephone service costing just a few hundred dollars. Debt collection agencies would be entrusted to recover the debts. Your data will be recklessly passed to whichever debt collection agencies. Such an absurd phenomenon, as seen by many people, is attributable to Hong Kong's governance structure, which tilts towards and protects the interests of the major consortia. Under this structure, the consortia enjoy special conveniences and privileges in respect of law, institutions, personal ties and administration. With such privileges and conveniences, their assets continue to increase.

Very often, debt collection activities are effective. Seeing that their son is harassed by debt collection agencies, some people or parents will, out of fear I have handled a case in which the parents have retired and do not have much money, and they have to surrender their lifelong saving of \$100,000 or \$80,000 to pay off the debts of their son. After a certain period of time, they even have to apply for CSSA. We often come across such miserable cases in the district, and people complain to us in tears not every day, but every week.

President, regarding today's amendments, Mr James TO will propose a number of amendments later to rectify the deficiencies. I nonetheless opine that the statutory control proposed in the amendments is insufficient. In respect of penalty and data, there are still plenty of loopholes in the law regarding the unauthorized release of personal data. For example, the abovementioned entrustment should actually be banned and considered an illegal act. This is because if the lender can sue the borrower by way of legal proceedings, he should not be allowed to entrust other organizations to recover the debts on his behalf. Anything relating to the seeking of benefits must be totally banned so that people's privacy would not be abused.

Later, when Mr James TO proposes his amendments and the Council enters the Committee stage, I will speak again on the deficiencies of the provisions. Thank you, President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now the best time to suspend the meeting. After the Council suspends today, it will resume at 9 am on 25 June (Monday).

Suspended accordingly at twelve minutes to One o'clock.

Annex II

Construction Industry Legislation (Miscellaneous Amendments) Bill 2012

Committee StageAmendments moved by the Secretary for Development

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By deleting subclause (2) and substituting—</p> <p>“(2) This Ordinance comes into operation on a day to be appointed by the Secretary by notice published in the Gazette.</p> <p>(3) In subsection (2)—</p> <p><i>Secretary</i> (局長) has the meaning given by section 2(1) of the Construction Workers Registration Ordinance (Cap. 583).”.</p>
8	<p>By deleting subclause (1) and substituting—</p> <p>“(1) Section 8, heading—</p> <p>Repeal</p> <p>“and powers of Authority”</p> <p>Substitute</p> <p>“of Council under this Ordinance”.”.</p>
18	<p>By adding—</p> <p>“(1A) Section 26(2), Chinese text—</p> <p>Repeal</p> <p>“管理局”</p> <p>Substitute</p> <p>“議會”。”.</p>

- 19(2) In the proposed section 29(3), in the Chinese text, by adding “的” after “有關”.
- 27 In the Chinese text, by deleting the proposed section 46(5A)(c) and substituting—
“(c) 將已記錄該新屆滿日期的註冊證交回該人。”.
- 28 In the proposed section 46A(4), in the Chinese text, by deleting “交還” and substituting “交回”.
- 28 In the proposed section 46A(5), in the Chinese text, by deleting everything after “的人，” and substituting “須在該通知發出的日期後的 14 日內，將註冊證交回註冊主任。”.
- 29 In the Chinese text, by deleting “交還” and substituting “交回”.
- 42 By deleting subclause (21) and substituting—
“(21) Schedule 4—
(a) Section 6(a)—
Repeal
“committee”
Substitute
“subcommittee”;
(b) Section 6(b)—
Repeal
“committee” (wherever appearing)
Substitute

“subcommittee”.”.

58 In the Chinese text, by deleting subclause (2) and substituting—

“(2) 第 56(1)條，在“第 55 條”之後 —

加入

“或《建造業工人註冊條例》(第 583 章)第 29 條”。”.

64(2) By deleting “122.” and substituting “124.”.