

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 27 January 2016

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE JAMES TO KUN-SUN

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, B.B.S., M.H.

PROF THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P., Ph.D.,  
R.N.

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, S.B.S., J.P.

THE HONOURABLE CYD HO SAU-LAN, J.P.

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

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

THE HONOURABLE CHAN HAK-KAN, J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., J.P.

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

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

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

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

THE HONOURABLE CLAUDIA MO

THE HONOURABLE MICHAEL TIEN PUK-SUN, B.B.S., J.P.

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

THE HONOURABLE NG LEUNG-SING, S.B.S., J.P.

THE HONOURABLE STEVEN HO CHUN-YIN, B.B.S.

THE HONOURABLE FRANKIE YICK CHI-MING, J.P.

THE HONOURABLE WU CHI-WAI, M.H.

THE HONOURABLE YIU SI-WING, B.B.S.

THE HONOURABLE GARY FAN KWOK-WAI

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

THE HONOURABLE CHARLES PETER MOK, J.P.

THE HONOURABLE CHAN CHI-CHUEN

THE HONOURABLE CHAN HAN-PAN, J.P.

DR THE HONOURABLE KENNETH CHAN KA-LOK

THE HONOURABLE CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE LEUNG CHE-CHEUNG, B.B.S., M.H., J.P.

THE HONOURABLE KENNETH LEUNG

THE HONOURABLE ALICE MAK MEI-KUEN, B.B.S., J.P.

DR THE HONOURABLE KWOK KA-KI

THE HONOURABLE KWOK WAI-KEUNG

THE HONOURABLE DENNIS KWOK

THE HONOURABLE CHRISTOPHER CHEUNG WAH-FUNG, S.B.S., J.P.

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

DR THE HONOURABLE HELENA WONG PIK-WAN

THE HONOURABLE IP KIN-YUEN

DR THE HONOURABLE ELIZABETH QUAT, J.P.

THE HONOURABLE MARTIN LIAO CHEUNG-KONG, S.B.S., J.P.

THE HONOURABLE POON SIU-PING, B.B.S., M.H.

THE HONOURABLE TANG KA-PIU, J.P.

DR THE HONOURABLE CHIANG LAI-WAN, J.P.

IR DR THE HONOURABLE LO WAI-KWOK, S.B.S., M.H., J.P.

THE HONOURABLE CHUNG KWOK-PAN

THE HONOURABLE CHRISTOPHER CHUNG SHU-KUN, B.B.S., M.H., J.P.

THE HONOURABLE TONY TSE WAI-CHUEN, B.B.S.

**MEMBER ABSENT:**

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

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE JOHN TSANG CHUN-WAH, G.B.M., J.P.  
THE FINANCIAL SECRETARY

PROF THE HONOURABLE K C CHAN, G.B.S., J.P.  
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE GREGORY SO KAM-LEUNG, G.B.S., J.P.  
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

THE HONOURABLE RAYMOND TAM CHI-YUEN, G.B.S., J.P.  
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

THE HONOURABLE LAI TUNG-KWOK, S.B.S., I.D.S.M., J.P.  
SECRETARY FOR SECURITY

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

MR GODFREY LEUNG KING-KWOK, J.P.  
UNDER SECRETARY FOR COMMERCE AND ECONOMIC  
DEVELOPMENT

**CLERKS IN ATTENDANCE:**

MR KENNETH CHEN WEI-ON, S.B.S., SECRETARY GENERAL

MS ANITA SIT, ASSISTANT SECRETARY GENERAL

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MS DORA WAI, ASSISTANT SECRETARY GENERAL

MR MATTHEW LOO, ASSISTANT SECRETARY GENERAL

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

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

## TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Antiquities (Excavation and Search) (Amendment) Regulation 2016 .....	9/2016
Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2016 .....	10/2016
Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2016 .....	11/2016
Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) (Amendment) Regulation 2016 .....	12/2016
Administration of Justice (Miscellaneous Provisions) Ordinance 2014 (Commencement) Notice .....	13/2016
Hong Kong Court of Final Appeal Suitors' Funds Rules (Commencement) Notice .....	14/2016
High Court Suitors' Funds (Amendment) Rules 2015 (Commencement) Notice .....	15/2016

District Court Suitors' Funds (Amendment) Rules 2015 (Commencement) Notice .....	16/2016
Lands Tribunal (Suitors' Funds) Rules (Commencement) Notice .....	17/2016
Labour Tribunal (Suitors' Funds) (Amendment) Rules 2015 (Commencement) Notice .....	18/2016
Small Claims Tribunal (Suitors' Funds) (Amendment) Rules 2015 (Commencement) Notice.....	19/2016

#### Other Papers

- No. 61 — Hospital Authority  
Annual Report 2014-2015
- No. 62 — Samaritan Fund  
Financial Statements for the year ended 31 March 2015 and  
Report on the Fund

#### ORAL ANSWERS TO QUESTIONS

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

#### **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1. **MR ALBERT HO** (in Cantonese): *President, before I raise my question, I would like to declare interest: I as a solicitor, as well as the law firm in which I practise, have handled torture claims and related judicial review cases.*

*President, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) has applied to Hong Kong since 1992. On the 13th of this month, when the Chief Executive attended a press conference after delivering this year's Policy Address,*

*a reporter asked whether Hong Kong could consider withdrawing from the Convention. In response, the Chief Executive said that "if needed, we could do so". In this connection, will the Government inform this Council:*

- (1) whether it has assessed if it can achieve the outcome of the Convention ceasing to apply to Hong Kong; if it has, of the details; if not, the reasons for that;*
- (2) whether it has assessed the resultant impact on Hong Kong's international image on protection of human rights in the event that the Convention ceases to apply to Hong Kong; if it has, of the details; if not, the reasons for that; and*
- (3) as China is a State Party to the Convention and matters about the Convention ceasing to apply to Hong Kong should be dealt with by the Central Authorities, whether it has raised the relevant proposal with the Central Authorities; if it has, of the response of the Central Authorities; if not, the reasons for that?*

**SECRETARY FOR SECURITY** (in Cantonese): President, my consolidated reply to the various parts of Mr HO's question is as follows:

Foreigners who smuggled themselves into Hong Kong, who overstayed their limit of stay allowed, or who were refused entry by the Immigration Department (ImmD) upon arrival in Hong Kong will be removed from Hong Kong in accordance with the Immigration Ordinance (Cap. 115). To safeguard immigration control and for public interest, they should be removed as soon as practicable.

However, Article 3(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), which applies to Hong Kong since 1992, stipulates that no State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

In June 2004, the Court of Final Appeal (CFA) ruled in *Prabakar* that, to a foreigner who has made a torture claim, his life and limb are in jeopardy and his fundamental human right not to be subjected to torture is involved.



Accordingly, the Government must determine his torture claim independently in a way that meets the "high standards of fairness". In accordance with CFA's ruling, the ImmD put in place an administrative mechanism to screen torture claims.

In December 2008, the Court of First Instance (CFI) ruled in FB that the Government must allow claimants to have access to legal assistance, and if claimants are unable to afford so, the Government must provide legal assistance to claimants out of public funds. At the same time, CFI ruled on various aspects of the procedures for handling torture claims to make them compliant with the "high standards of fairness" required in Prabakar.

To implement the above judgment, the Government enhanced the screening mechanism by administrative means. At the same time, the Government started working on a legislative exercise to underpin the procedural framework for screening torture claims by statutory provisions. In July 2012, the Legislative Council passed the Immigration (Amendment) Ordinance 2012; the amended Ordinance commenced in December 2012. Since then, the ImmD screens torture claims on the basis of the amended Immigration Ordinance.

However, in December 2012, CFA made another ruling in Ubamaka that, apart from torture, pursuant to Article 3 of the Hong Kong Bill of Rights (HKBOR), if a foreigner subject to removal has a real risk of being subjected to "cruel, inhuman or degrading treatment or punishment" (CIDTP) after being removed, then the Government cannot remove that person either.

Three months later, in March 2013, CFA ruled in C that according to the ImmD's established practice based on humanitarian consideration, the Government is also obliged to independently assess whether a foreigner has a risk of being subjected to persecution in his country of origin before removing him there.

In other words, apart from torture claims, if a foreigner who faces removal claims that he may be subjected to CIDTP or persecution in his country of origin, the Government must screen his claim under procedures that meet with high standards of fairness, or else it would be a violation of the CFA judgments above.

To implement the two CFA judgments and to prevent a claimant from raising one claim after another to resist removal pursuant to the Convention,

HKBOR, the Immigration Ordinance and the two CFA judgments, the Government decided to commence the unified screening mechanism (USM) in March 2014 to screen claims in one go.

In short, the HKSAR Government implements USM as required under the Convention, HKBOR, the Immigration Ordinance, and the CFA judgments above.

Since commencement of USM, the number of claimants increased significantly by 330% to 440 per month. At the end of 2015, the number of claimants pending screening reached almost 11 000.

The significant increase in claims and the display of behaviours abusing screening procedures have caused public concerns over the social and public order issues brought about by the prolonged presence of a large and growing number of claimants in Hong Kong.

Our top priority is to adopt appropriate measures, under the prevailing legal requirements, to intercept illegal immigrants at source and to expedite the screening process to remove unsubstantiated claimants to their country of origin as soon as possible. We will launch a comprehensive review of the strategy of handling non-refoulement claims in the following four dimensions:

- (i) Pre-arrival control: To consider introducing pre-arrival registration to deter the arrival of economic migrants; to update the law to strengthen penalties against human smuggling and to step up enforcement against smuggling syndicates; and to review visa-free policies as required, and so on;
- (ii) Screening procedures: To provide statutory underpinning to USM procedures; to tighten the overall time frame for screening claims, prohibit delaying tactics and screen out manifestly unfounded claims early; to review the provision of publicly-funded legal assistance; to enhance the operation of the Torture Claims Appeal Board; and to enhance the ImmD's capability to collect countries of origin information, and so on;

- (iii) Detention: to consider strengthening the ImmD's legal power to detain claimants, and to identify and refurbish suitable facilities for expanding immigration detention capacity if necessary; and
- (iv) Enforcement and removal: to strengthen liaison with local Consulates General to expedite the removal process; to step up enforcement against criminal activities such as unlawful employment; and to enhance publicity in Hong Kong and overseas, and so on.

The review has just begun and we will brief the Panel on Security on the details soon. During the review, the Government will actively consider all feasible options and seriously assess legal issues arising from all proposals having regard to the Basic Law, HKBOR, past CFA judgments and the latest overseas jurisprudence. We will also assess whether the proposals are feasible and whether they can effectively tackle our exacerbating problems of illegal immigration and overstaying. We will comprehensively review our strategy from all angles of the wide range of complex issues involved. In principle, we will maintain an open mind to any proposal during the review. That said, having regard to the requirement laid down in law in relation to the screening of non-refoulement claims, we have no plans to assess the question of cessation of application of the Convention at present.

**MR ALBERT HO** (in Cantonese): *President, as indicated by the Secretary in his main reply, the Government agrees that Hong Kong, a civilized community where human rights are respected, has an obligation to comply with the Convention. There is a need for the authorities to review the mechanism in the light of the prevailing problems, including possible abuses and delays. I believe the Secretary would agree that the review should be conducted in compliance with the standards required by the Convention and the underlying principles in the CFA judgments. If this is also the stance of the SAR Government, would the Secretary agree that the remarks made by the Chief Executive earlier may lead to misunderstanding? His remarks have aroused strong repercussions from society, and sparked a lot of speculations and agitation. May the Secretary clarify that the Government's objective is only to improve the mechanism for Hong Kong to fulfil the requirements of the Convention, hence it will not consider withdrawing from the Convention, and the Chief Executive should clarify or withdraw his previous remarks?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr HO, just now I have spent about seven minutes to elaborate the SAR Government's overall approach in addressing these problems. In my main reply, I have repeatedly emphasized that we will address these complicated problems in accordance with the Convention, the CFA judgments and other relevant laws. In addition, as pointed out by Mr HO and agreed by the public, the most urgent task before us is to review the existing system, and explore how to step up the process of handling these problems and effectively tackle the various challenges before us within the legal framework. During this process, we have no plans to assess the question of cessation of application of the Convention. I think I have clearly responded to and elaborated this point in my main reply.

**MR GARY FAN** (in Cantonese): *President, when the Chief Executive talked about Hong Kong's withdrawal from the Convention earlier on, he in fact had added another point — he did not wish to see any country taking advantage of the relatively lenient immigration policy of Hong Kong. Secretary, this is all about immigration policy, why did the Government react so differently — the SAR Government has been turning a deaf ear to the suggestion that it should exercise the authority to approve One-way Permit (OWP) and nothing has been done so far, yet the Chief Executive has responded so strongly with respect to reviewing the removal procedures and the mechanism for processing torture claims?*

*President, my supplement question for the Secretary is: The United Nations Committee against Torture has previously proposed the conduct of an independent investigation into the SAR Government's abuse of force in the Umbrella Movement, is the Chief Executive LEUNG Chun-ying now seeking vengeance by threatening to withdraw from the Convention?*

**SECRETARY FOR SECURITY** (in Cantonese): I utterly have no idea how Mr Gary FAN could reach the conclusion of seeking vengeance. Regarding the issue of OWP mentioned by Mr FAN just now, the OWP arrangement has been implemented in Hong Kong for a long time with proven effectiveness, and the Basic Law contains special provisions with respect to the OWP arrangement. According to my understanding, the Chief Executive was referring to the visa-free access applicable to incoming foreigners, which has nothing to do with the issue of OWP. I hope Members would not mix up the two issues.

The problem that we face now is actually a concern of the public, and Members should have noticed that the problem has been frequently reported by the press lately. We have listened to the views from various sides through contacts with different walks of people in the community, and it is necessary for us to approach the problem in a practical manner. Our goal is to discharge our responsibilities in compliance with legal requirements. We do not wish to see delays in processing some unfounded non-refoulement claims in Hong Kong, nor do we want to see that such claims are not processed effectively in Hong Kong. As such, the scenarios mentioned by Mr FAN will not occur in Hong Kong.

**MR CHAN HAK-KAN** (in Cantonese): *President, currently we have about 11 000 torture claimants staying in Hong Kong. I believe the Secretary would agree that some of them are bogus refugees who seek to prolong their stay in Hong Kong by providing false or misleading information to the officers of the screening authorities. May I ask the Secretary: Will the authorities establish standing notification mechanisms with the several countries where these bogus refugees usually come from, with a view to expediting the authorities' screening or information collecting process, so that these bogus refugees can be repatriated expeditiously?*

**SECRETARY FOR SECURITY** (in Cantonese): I would like to thank Mr CHAN for his supplementary question. We have been implementing a series of measures. Firstly, given that a part of the screening process aims to understand the prevailing situation of the country of origin of a non-refoulement claimant, we will try to obtain the information showing the situation of these countries through various feasible and lawful channels, as the information will help our screening work. Secondly, we have recently noticed a trend that some foreigners from certain countries made false statements in order to obtain refugee visas to stay in Hong Kong. To handle these cases, we have to join hands with the local governments. Hence we have a series of plans to carry out the work in this respect.

For example, some officers have been sent to visit a certain country in order to discuss this issue with the local departments concerned. During the discussion, our colleagues pointed out the seriousness of the problem, and urged them to tackle the problem pursuant to the law in their country. In addition, we gave a detailed account of the relevant statutes in Hong Kong through the local

media. We also have plans to send officers to those countries whose nationals keep coming to Hong Kong to lodge non-refoulement claims. We will gradually carry out such plans.

**MR WONG KWOK-HING** (in Cantonese): *President, the Secretary mentioned that they will tighten the time frame for screening claims, prohibit delaying tactics and screen out manifestly unfounded claims as early as possible. May the Secretary detail the feasible options currently adopted by the Government? As we now have over 10 000 claimants staying in Hong Kong, the public are deeply concerned that these claimants are abusing Hong Kong's prevailing systems.*

**SECRETARY FOR SECURITY** (in Cantonese): President, despite the shortage of time, please allow me to spend a bit of time on providing some relevant information before my reply to Mr WONG's supplementary question. The problem we face now is some claimants' attempt to delay the screening process. To cite a very common example, the claimant would apply for extension of time so as to buy more time for completing the relevant forms, as all claimants are required to fill in an application form. In fact, we are not alone in showing concern for this problem. Let me cite an example. On the case of R v Director of Immigration, Judge Louis CHAN Kong-yiu of the CFI of the High Court pointed out in May 2013 that under normal circumstances, the 28 day-time frame provided for in the existing Immigration Ordinance should be sufficient for a claimant to complete the torture claim form. In case of torture claim particularly complex in nature, the duty solicitor is duty bound to cite concrete justifications to help the ImmD comprehend the complexity of the case. The duty solicitor should not apply for extension of time on generic excuses, such as the need for more time to deliberate with the claimant concerned. One of the major problems we face now is that many claimants apply for extension of time on various reasons. Hence, we must tackle this problem. For example, when claimants lodge claims with the relevant authorities in other countries, they either immediately submit their forms or be granted an extension of 10-odd days. Notwithstanding the time frame of 28 days stipulated under the law of Hong Kong and the extension to 49 days upon deliberation with the duty solicitor, many claimants still find the time frame not long enough. That is why I have to particularly point out the problem of time frame that we face now.

Another problem is about the arrangement of interviews. For example, one third of the screening interviews arranged last year did not conduct as scheduled. In 70% of these cases, the officers were informed that the claimant was physically unwell only at the last minute, and some claimants were simply absent from the interview without giving any notification. Even for the claimants who were absent on the excuse of physical discomfort, the majority of them failed to provide relevant medical certificates. As such, we need to make some efforts and tighten up the practice a bit within the scope of the law. Regarding the range of preparatory work that we have undertaken, we intend to brief the Panel on Security and listen to Members' views. We need all relevant stakeholders to work together in a bid to figure out a more effective way to handle these situations.

**MR LEUNG CHE-CHEUNG** (in Cantonese): *President, in the Secretary's reply given to a supplementary question just now, he mentioned that the surge in the number of claimants has led to the abuse of screening procedures and the refugees' prolonged stay in Hong Kong. The majority of Hong Kong people are concerned that these situations would disrupt social order and create the problem of illegal workers. Considering that the claimants are making their claims through lawful procedures, the DAB would like to know whether the Government would adopt the policy of setting up a refugee camp, so that the refugees will be confined in the camp and are less likely to cause troubles in the community. Moreover, as the Secretary pointed out earlier, many claimants were absent from the screening interviews. If a refugee camp has been set up, it is possible to locate the absent claimants in the camp. Why does the Government not implement the policy of refugee camp which was proven effective before?*

**SECRETARY FOR SECURITY** (in Cantonese): *President, if the closed camp policy were to be implemented, we need to have the relevant authorization under the law. According to the prevailing legislation, under some circumstances, the ImmD may detain the people who enter or stay in Hong Kong illegally, but as clearly stated in the court judgment, such detention can only serve the purpose of giving the ImmD a reasonable length of time to complete the removal procedure. As Members are aware and as I elaborated earlier, the screening of non-refoulement claims is a time consuming process. According to the prevailing law, claimants are not detained on the strength of Recognizance Forms commonly known as "going-out pass". While we have to address this problem, we also need to further consider the applicability of the relevant law, and what*

authority is needed should we want to revise the legislation. On the subject of detention, as I mentioned in the main reply, we need to look into the issue as it is not an easy one that can be resolved by implementing one single policy. Anyway, we will work along this direction.

**PRESIDENT** (in Cantonese): This Council has spent more than 24 minutes on this question. Second question.

### **Causing Hong Kong People to Enter the Mainland by Using Ways Which Circumvent the Law**

2. **MR ALAN LEONG** (in Cantonese): *President, on the sixth of this month, Global Times, a state-run newspaper of the Mainland, published an editorial entitled "Hype and distortion of Hong Kong bookseller's co-operation with investigation". When referring to the way by which a shareholder of Causeway Bay Books, who was reported missing last month, entered the Mainland, the editorial pointed out that "powerful agencies across the world generally have their own ways to circumvent the law and make the person under investigation to work with them, so that they can proceed with their work without crossing the bottom line of the system". There are comments that such statement aroused concerns that some mainland law enforcement officers had caused the missing person to enter the Mainland by using, in Hong Kong, ways which circumvented the law, and that such an act is a blatant breach of the "one country, two systems" principle. In this connection, will the Government inform this Council:*

- (1) *whether it knows, in the past five years, if any "powerful agencies" of the Mainland caused any Hong Kong people to enter the Mainland by using, in Hong Kong, ways of arrests, transport in custody or other ways which circumvented the law; if there were such incidents, of the details;*
- (2) *whether it received requests for assistance from any "powerful agencies" or other agencies of the Mainland in the past five years to facilitate their causing any Hong Kong people to enter the Mainland by using, in Hong Kong, ways of arrests, transport in custody or other ways which circumvented the law; if there were such incidents, of the details and the Government's responses to such requests; and*



- (3) *whether it has made enquiries with the Central Authorities to see if the "powerful agencies" or other agencies of the Mainland know whether any Hong Kong people entered the Mainland in the past five years by using ways which circumvented the law; if it has made such enquiries, of the replies received?*

**SECRETARY FOR SECURITY** (in Cantonese): President, the HKSAR Government does not use the term "powerful agencies". I also do not understand what "powerful agencies" as mentioned by a media organization refer to.

The HKSAR Government attaches great importance to the cases of missing persons associated with a bookstore in Causeway Bay and fully understands the concerns of the community. My consolidated reply to Mr Alan LEONG's question is as follows.

With regard to the missing person cases, the Police have already commenced proactive and comprehensive investigation. During the course of investigation, the Police have been maintaining contact with the families of the four missing Hong Kong residents. The Police have also informed the families of the investigation progress and answered their queries. At the same time, the Police have set up a 24-hour hotline 6764 4385 and appealed to the public to provide information related to the cases.

In addition, the Police have been seeking assistance from relevant Mainland police co-operation units via the police co-operation mechanism. On 18 January, the Police received a reply letter concerning one of the missing persons, Mr LEE Po, from the Interpol Guangdong Liaison Office of the Guangdong Provincial Public Security Department, which states that Mr LEE Po is in the Mainland. The Police have written to the Interpol Guangdong Liaison Office of the Guangdong Provincial Public Security Department on the same day, requesting to meet with Mr LEE Po and further understand the situation of the incident. Afterwards, the Police were informed by the wife of Mr LEE Po on 23 January that she had met with Mr LEE Po at a guesthouse in the Mainland on the same day. According to Mrs LEE, Mr LEE Po was healthy and in good spirits, and he was assisting in an investigation in the capacity of a witness. After the meeting, Mr LEE Po asked her to pass on a letter addressed to the Hong

Kong Police. The letter's content was similar to previous letters penned by Mr LEE Po. Mrs LEE did not disclose any further details regarding the location of the meeting and the nature of the investigation Mr LEE Po was involved in.

The Hong Kong Police are now continuing to follow up on the case. In order to obtain further details of the circumstances of the case, the Hong Kong Police have issued another request on 23 January to the Guangdong Provincial Public Security Department to assist in arranging a meeting between Mr LEE Po and the Hong Kong Police.

President, since Hong Kong's return to China, the HKSAR Government has all along been dealing with matters relating to the HKSAR strictly in accordance with the principle of "one country, two systems" and the Basic Law.

The Basic Law only authorizes law enforcement agencies of Hong Kong to enforce laws in Hong Kong. Law enforcement agencies outside of Hong Kong, including law enforcement agencies of the Mainland and overseas, do not have the authority to enforce laws in Hong Kong. If law enforcement officers of non-Hong Kong jurisdictions take law enforcement actions in Hong Kong, this will contravene Hong Kong laws and is unacceptable. Except properly permitted under the law, we shall not tolerate any unauthorized law enforcement action by anyone or any organization. For any suspected case of infringement, we will conduct full and thorough investigation. I stress that the HKSAR Government acts according to the law and would not allow or assist non-Hong Kong law enforcement officers to take law enforcement actions in Hong Kong.

In addition, Article 28 of the Basic Law states that the freedom of the person of Hong Kong residents shall be inviolable. No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited. The HKSAR Government will, as always, continue to resolutely safeguard the rights and freedoms of Hong Kong residents in accordance with the law.

President, Hong Kong residents enjoy ample freedom of the press and of expression. Commentary is all along a channel for the media to express opinion and such opinion represents a view. The Police's investigation is aimed at finding out the truth, and the conclusion must be based on evidence and facts. In respect of some formulation that Mainland law enforcement officers have taken such actions as "arrest" or "send under guard escort", and so on, in Hong

Kong to bring someone to the Mainland, so far there is no substantive evidence to prove such formulation to be true and it is only speculation at the moment. The Police have all along been acting strictly in accordance with the laws and abiding by regulations. The Police would not give assistance to and tolerate illegal acts. In respect of the missing person case of Mr LEE Po, the Police have already written to the Interpol Guangdong Liaison Office of the Guangdong Provincial Public Security Department to seek to meet with Mr LEE Po so as to further understand the situation.

Before and after Hong Kong's return to China, the Hong Kong and Mainland police authorities have all along been engaging in co-operation using the mode of co-operation similar to that of international police co-operation laid down by the Interpol. To ensure consistent implementation, police authorities of both sides conduct regular high-level meetings for regulating the basis and mode of co-operation. When co-operation is undertaken, both sides have to strictly abide by the provisions of the relevant laws and respect the jurisdiction of the other side. Under such co-operation, police officers of one side may visit the territory of the other side for investigation purpose. However, any law enforcement actions must only be taken by the local law enforcement agencies in accordance with the law. Under no circumstances can police officers of either side take enforcement actions in the territory of the other jurisdiction.

During the course of case liaison between the Hong Kong Police and Mainland law enforcement agencies under the co-operation mechanism, if one party requires the assistance of the other party to conduct investigation, the requested party may gather information relevant to the case through legal means and provide such information to the requesting party. When the requesting party makes request for assistance, it must give prior notification to the requested party and explain clearly the nature of the case and the scope of the assistance sought for the investigation. It will then be for the law enforcement officers of the requested party to undertake the investigation work in accordance with the law.

In the past five years, police authorities of the two places have made in total about 5 500 requests for assistance through the police co-operation mechanism. The co-operation mechanism has been operating smoothly and effectively. In the past, the Police have obtained useful information through the mechanism contributing to the investigation and even solving the cases, including cases about which the public is concerned such as serious wounding cases, drug cases, cases of robbery with genuine firearm, and so on.

**MR ALAN LEONG** (in Cantonese): *President, irrespective of whether the term "powerful agencies" has been used by the HKSAR Government, I hope the Secretary would understand that Hong Kong people have a reasonable hope of not being "made to disappear" for no cause or reason within the territory of HKSAR.*

*President, I have the feeling that the Secretary is evading my question. Nevertheless, no matter what, although he does not accept that the Global Times is a mouthpiece of the Mainland Government, he has at least pointed out in the main reply that a reply letter was received on 18 January from the Interpol Guangdong Liaison Office of the Guangdong Provincial Public Security Department, implying that certain public authorities in the Mainland are involved in the case, otherwise a reply would not have been given to the HKSAR Government through such a channel by the Guangdong Provincial Public Security Department.*

*The Secretary should at least accept that Mr LEE Po has left Hong Kong to the Mainland through some unusual means, be him trussed up and taken away by a speedboat or a "shampoo boat" (illegal high speed ferry) or by other means, or even forced to steal into the Mainland. In his reply given at the meeting of the Panel on Security held yesterday, the Secretary stated that it was still not sure whether the case of Mr LEE Po fell within the scope of the notification mechanism. Hence, I would like to ask whether Chief Executive LEUNG Chun-ying considers it an opportune time for him to interfere now and, instead of hiding himself behind the so-called notification mechanism, handle the matter by political means in the same way as how the former Chief Executive Donald TSANG handled the case of Mr CHING Cheong?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr LEONG, the same question was put to the Commissioner of Police (the Commissioner) by the press at a press conference held yesterday to review the crime situation last year, and there is a point in the Commissioner's reply which I would like to illustrate once again here.

In the current case, enquiries have been made by the Police to its Mainland counterparts via the police co-operation mechanism because there are messages at present to suggest that Mr LEE Po is in the Mainland. I have made an

elaboration on the scope of the reciprocal notification mechanism during an exchange of views with a few Members yesterday and will not repeat the details here. I believe that I have already expressed my views very clearly.

As for Chief Executive, once he learned about the incident, a prompt response was given to address public concern, and he has also made it clear repeatedly that great importance had been attached to the case. Chief Executive has personally taken multi-faceted actions through various channels in the hope that he can have a better understanding of the progress of the case and express the public's intense concerns over the case. Some replies have already been obtained when we take forward the matter with the current approach.

It is our earnest hope that we can meet with Mr LEE Po so that we can directly ask him what had actually happened. Although the wife of Mr LEE Po had met with her husband at a guesthouse in the Mainland last Saturday and passed on a letter addressed to the Hong Kong Police from Mr LEE after she had returned to Hong Kong, we consider it necessary to take this step to get a grasp of the entire story and I think this is a very important step. It is hoped that some progress could be made as early as possible for our request to meet with Mr LEE Po.

**MR ALAN LEONG** (in Cantonese): *The Secretary has not answered my supplementary question. I am asking if Chief Executive LEUNG Chun-ying would follow the example of the former Chief Executive Donald TSANG and bring the issue up with the State President and the Premier? But he has not answered.*

**SECRETARY FOR SECURITY** (in Cantonese): President, I believe the HKSAR Government would try to follow up on the case through all feasible and effective means.

**MR GARY FAN** (in Cantonese): *President, when questioned closely by reporters from Hong Kong the day before yesterday (that is, Monday), Mr LI Qingxiong, Deputy Director of the Guangdong Provincial Public Security Department, replied that he did not know if LEE Po had entered the Mainland illegally. ZHU Xiaodan, the Governor of the Guangdong Province, even said that for the concrete details of the case, they might have to ask the relevant*

*departments in charge, seemingly acknowledging indirectly the existence of "powerful agencies". In the reply given by the Secretary earlier, this is described as a term used by a media organization but things are actually not that simple because a state-run newspaper of the Mainland is involved. What we are talking about now is the fact that the term "powerful agencies" has been used by official media and a mouthpiece representing the Beijing Government to describe the departments in charge.*

*When answering Mr Alan LEONG's question, the Secretary has kept on saying that assistance had been sought from the Guangdong Provincial Public Security Department in respect of the disappearance of Mr LEE Po. I thus would like to ask the Secretary: Has clarification been made with the Mainland side to identify which departments are actually the "powerful agencies" in charge of the case of Mr LEE Po being reported missing? If the HKSAR Government fails to clearly identify such "powerful agencies" and does not know for sure whether its counterpart in the Mainland in respect of the case should be the Guangdong Provincial Public Security Department, a certain police unit of the Mainland, a certain group of Mainland law enforcement officers or a certain public authority in the Mainland, how can the personal safety of Hong Kong people within the territory of HKSAR be safeguarded as suggested by the Secretary? How can the Secretary make every endeavour, as mentioned by the Secretary earlier, to investigate into each alleged missing person case?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr FAN, with regard to the term "powerful agencies", I have already explained our position clearly in the main reply given just now. The comments frequently quoted by Members at present are actually taken from an article published in a newspaper. I think we all agree that the comments expressed in a newspaper are press comments only, while an official statement, if any, is quite another matter. Hence, we should not keep on speculating about or even draw conclusions from an assumption or comments expressed on an information platform.

As for the replies offered by Guangdong Provincial officials that day in response to the questions raised by reporters from Hong Kong, as I am not the persons involved, I am not in a position and will not try to interpret the answers given by the officials concerned to such questions. When handling cases of this sort, we always base our work on evidence in order to find out the facts.

**MR GARY FAN** (in Cantonese): *Does it mean that the Secretary cannot answer my question and up to this moment ...*

**PRESIDENT** (in Cantonese): Mr FAN, please briefly repeat your supplementary question. You have made too many comments.

**MR GARY FAN** (in Cantonese): *... which departments does the term "powerful agencies" specifically refer to?*

**PRESIDENT** (in Cantonese): Please briefly repeat your supplementary question.

**MR GARY FAN** (in Cantonese): *Alright. Secretary, does it mean that up to this moment, you cannot specifically and accurately tell us which departments does the term "powerful agencies" refer to? Can you not reply my question?*

**SECRETARY FOR SECURITY** (in Cantonese): President, a clear answer has already been given at the beginning of the main reply. I think what I have said should be clear enough to answer this question.

**MR DENNIS KWOK** (in Cantonese): *President, there are in fact past incidents in Hong Kong which are similar to the case of LEE Po. The Secretary may recall that in September 2013, PAN Weixi and his wife were kidnapped outside their house on Island Road and taken away in a car. They were later abducted in a speedboat to Guangzhou, where Mr PAN was detained, tortured and interrogated by Guangzhou officials and subsequently sentenced to imprisonment for 17 years.*

*It has always been our wish to ask: Under which provision of the criminal law of China is Mr LEE Po detained, arrested, put under investigation or subject to other procedures? What criminal law is invoked to detain him? In this connection, have enquiries been made by the Secretary to the Mainland agencies concerned? Besides, with regard to the request for a meeting with Mr LEE Po, when will the meeting be held? Since the wife of LEE Po has been allowed to*

*meet with her husband, why a reply to the enquiries made is still not available after so many days? In this regard, has the Secretary ever doubted the sincerity of the Mainland side to genuinely respect the existing notification mechanism?*

**SECRETARY FOR SECURITY** (in Cantonese): Since a few questions have been raised by the Member, let me first respond to the question concerning the case of Mr PAN in 2013. With regard to the case, the Police have, when answering media enquiries, already disclosed at great length details which could be made available. This is a case of false imprisonment and investigation into the case has already been carried out by the Police. With the assistance from the relevant Mainland departments, Mrs PAN was escorted back to Hong Kong by the Police. As for Mr PAN, as he had allegedly violated the laws of the Mainland, he was subject to examination by the Mainland authorities and the case was subsequently taken to court. As the specific details have already been made known to the public, I do not wish to waste our valuable time here to elaborate further. However, I would like to point out that the Police are still continuing to follow up on the case and three persons have been arrested so far, though prosecution action could not be initiated due to insufficient evidence.

Regarding the second part of Mr KWOK's supplementary question, views have also been exchanged on the issues involved at the meeting of the Panel on Security held yesterday. The notification mechanism is a system under which notification could be made by the relevant Mainland departments to their Hong Kong counterparts for cases involving the imposition of criminal compulsory measures on Hong Kong residents. As Mr KWOK may be fully aware, five categories of criminal compulsory measures are covered under the mechanism. The most crucial question is: Has Mr LEE been subject to any one of the five categories of compulsory measures? If any one of these measures has been imposed on Mr LEE, the case is within the scope of the notification mechanism and a notification would be required; if not, the case would fall outside the scope of the mechanism.

Moreover, there is another mechanism, namely the police co-operation mechanism, in place for the Hong Kong Police to seek assistance from the Mainland police authorities as and when required. This is the reason why we have chosen to write to the Mainland counterparts to request for assistance under the co-operation mechanism. We have already received a reply confirming that Mr LEE is in the Mainland. In order to obtain details of the case, we have requested for a meeting with Mr LEE. I consider it very reasonable and logical



for the Hong Kong Police to follow up on the case in this manner. If anyone, without first ascertaining the facts of the case, tries to conclude from inference that the notification mechanism is ineffective, I beg to differ from such views.

Moreover, as evidenced by past figures, the mechanism has also proven to be effective because for a long period in the past, we have received over 12 000 notifications involving 9 400 Hong Kong residents. With such a large number of notifications received under the mechanism, how can we now say that the mechanism has lost its effect? A holistic approach should be adopted to assess the effectiveness of a mechanism.

**MR DENNIS KWOK** (in Cantonese): *The Secretary has not answered my supplementary question. When will the Hong Kong Police be able to meet with LEE Po?*

**SECRETARY FOR SECURITY** (in Cantonese): We would of course like to have the meeting held as soon as possible but the arrangement is not under the control of the Hong Kong Police.

**DR LAM TAI-FAI** (in Cantonese): *President, Hong Kong people are eager to attain stable development under the principles of "one country, two systems", "a high degree of autonomy" and "Hong Kong people administering Hong Kong" after Hong Kong's return to China, and the Central Government would very much hope that Hong Kong people could give the HKSAR Government their vigorous support, and that Chief Executive could administer and act in accordance with the Basic Law and the laws of Hong Kong.*

*President, in respect of the case concerning Causeway Bay Books, God is watching what you people are doing. Has anyone done anything endangering the interests of the State? Has any public officer of the Mainland or the Hong Kong Government failed to act in accordance with the law? Has the HKSAR Government made its best endeavour to defend "one country, two systems", "a high degree of autonomy" and "Hong Kong people administering Hong Kong"? I believe the truth will soon be brought to light and Hong Kong people are so smart and discerning that they would definitely be able to make their own judgment.*

*With regard to my supplementary question, it is noted that as at today, legislation has still not been enacted in Hong Kong for Article 23 of the Basic Law. If anyone in Hong Kong has really done anything which would endanger the interests of the State, and as it is an indisputable fact that Hong Kong is part of China, whether the HKSAR Government would, for the protection of national security, sovereignty and the safety of the people, take the initiative to notify or render assistance to the Mainland Government so that the person who has violated the national security law and jeopardized national safety would be brought to and committed for trial in the Mainland, or told to return to the Mainland in his own way to stand trial before a court? If so, whether the Government's ...*

**PRESIDENT** (in Cantonese): Dr LAM, you have already stated your supplementary question. Please sit down and let the Secretary answer.

**DR LAM TAI-FAI** (in Cantonese): ... *I am about to state my supplementary question which is as follows: If so, whether the Government's handling of the case would be regarded as a violation of the principle of "one country, two systems"? If not, would it be unfair to the State and the Central Government if the HKSAR Government chooses not to do so? As you are appointed a Director of Bureau and Chief Executive is appointed the head of the HKSAR ...*

**PRESIDENT** (in Cantonese): Dr LAM, please stop asking questions and sit down. Secretary, please be concise as far as possible with your reply.

**SECRETARY FOR SECURITY** (in Cantonese): The HKSAR Government has been acting strictly in accordance with the Basic Law. National laws shall not be applied in Hong Kong except for those listed in Annex III to the Basic Law and applied in the HKSAR under Article 18 of the Basic Law. The requirement has been expressly set out in the Basic Law and it has also formed a basis for us to act on. All actions taken by the law enforcement agencies of Hong Kong must strictly abide by the laws of Hong Kong. We are fully upholding and supporting the principles of "Hong Kong people administering Hong Kong" and "a high degree of autonomy" by adopting the current approach.

**PRESIDENT** (in Cantonese): We have spent nearly 25 minutes 30 seconds on this question but only three Members could ask supplementary questions. Although there are nine Members still waiting to ask their supplementary questions, we must stop here. Third question.

### **Chief Executive's Duty Visits to Report on His Work to Central People's Government**

3. **MR LEE CHEUK-YAN** (in Cantonese): *President, regarding issues relating to the Chief Executive (CE) paying duty visits to report on his work to the Central People's Government (CPG) (reporting visits), will the Government inform this Council:*

- (1) *whether the authorities will, in composing CE's reports for reporting visits in future, consider consulting the public on the outline and the main contents of such reports, and making public such reports and relevant documents expeditiously after the reporting visits, so as to manifest the constitutional responsibility that CE shall be accountable to the Hong Kong Special Administrative Region, and to enhance the transparency of policy implementation by the Government; if so, of the details; if not, the reasons for that;*
- (2) *whether the authorities, during the previous reporting visits made by the incumbent CE or in his reports for such reporting visits, proposed matters for which they intended to secure CPG's support; if so, whether they can provide the relevant list and details; if they cannot provide such information, of the reasons for that; and*
- (3) *whether the incumbent CE, during his previous reporting visits, received directives or instructions given by CPG in verbal, written or other forms; if so, whether the authorities can provide the relevant list and details; if they cannot provide such information, of the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, after consulting the Chief Executive's Office, our authorized reply to Mr LEE's question is as follows:

Under the principle of "one country, two systems", "Hong Kong people administering Hong Kong" and "a high degree of autonomy" and the provisions of the Basic Law, the Chief Executive has a unique and important constitutional role. Article 43 of the Basic Law provides that the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) shall be the head of the HKSAR and shall represent the HKSAR, and shall be accountable to the Central People's Government (CPG) and the HKSAR. Article 48 also provides that the Chief Executive shall lead the Government of the HKSAR; be responsible for the implementation of the Basic Law and other laws which, in accordance with the Basic Law, apply in the HKSAR; implement the directives issued by the CPG in respect of the relevant matters provided for in the Basic Law; and conduct, on behalf of the Government of the HKSAR, external affairs and other affairs authorized by the Central Authorities. To fulfil the above constitutional requirements, all the Chief Executives since the HKSAR's return to the Motherland report to state leaders on the latest developments and situation of the HKSAR.

Since the assumption of office in July 2012, the incumbent Chief Executive has been making detailed, comprehensive, objective and truthful reports to state leaders on the situation of the HKSAR and the work of the HKSAR Government. State leaders have fully affirmed and supported the work of the Chief Executive and the HKSAR Government.

The Chief Executive's Office announces the relevant dates, arrangements and accompanying officials every time before the annual duty visit of the Chief Executive in the form of press releases. The Chief Executive also meets and informs the media proactively of the developments of his visit during his stay in Beijing. Taking the recent duty visit as an example, the Chief Executive met the media before, during and after his duty visit. He briefly introduced the issues of his duty visit and the matters that he would seek support from the CPG, such as how Hong Kong could complement the two important national strategies, namely the National 13th Five-Year Plan and the "Belt and Road Initiative", the Shenzhen-Hong Kong Stock Connect and the progress of the Hong Kong-Zhuhai-Macao Bridge, and so on. When the Chief Executive met the media, he also relayed the views of state leaders in response to his report.

Pursuant to Article 64 of the Basic Law, the Chief Executive regularly presents his Policy Address to the Legislative Council, after which he responds to Members' questions and listens to the views of the media and the public. In

addition, the Chief Executive generally attends four Question and Answer Sessions of the Legislative Council in each legislative session to exchange views on the work of the administration with the Members. Bureaux and departments of the Government of the HKSAR will also fully exchange views and listen to comments and suggestions on their respective policy areas with Members of the Legislative Council, District Councils, statutory bodies and consultative committees. In conclusion, the Chief Executive and the Government under his leadership are accountable to the HKSAR and the public for their policies through various approaches and channels.

**MR LEE CHEUK-YAN** (in Cantonese): *President, Members can sense the absurdity of the main reply upon listening to it. First, I ask about the contents of the whole report. Second, I ask about the matters for which the Chief Executive intended to secure the CPG's support. Third, I ask about the directives from the CPG. However, the Secretary has not given any answer at all. There is absolutely no transparency. He also said that the Government was accountable to the HKSAR. But from the present case, it basically is unwilling to answer the questions from the Legislative Council Members and is unwilling to enhance the transparency.*

*In the main reply, the Secretary mentioned that the Chief Executive "has been making detailed, comprehensive, objective and truthful reports to state leaders on the situation of the HKSAR". I do not know how, in his words, detailed, comprehensive and objective the reports are. If the reports are detailed, comprehensive and objective, has the Chief Executive mentioned that the appointment of Prof Arthur LI as Chairman of the Council of the University of Hong Kong had triggered a lot of grievances in the community? Has he mentioned that the Hong Kong people were now rather dissatisfied with the "white elephant" projects with cost overruns? Has he mentioned that his undertakings on standard working hours, universal retirement protection, the abolition of the arrangement for the severance payments being offset by the accrued benefits in the Mandatory Provident Fund had all been defaulted? Has he mentioned all these matters? In fact, we basically do not know what he has reported. He might just be "shoe shining" blindly, reporting casually, and then only hiding his wrongdoing while praising his good deeds ...*

**PRESIDENT** (in Cantonese): Mr LEE, if what you have just put forward is your supplementary question, please let the Secretary answer it.

**MR LEE CHEUK-YAN** (in Cantonese): *Yes, it is. My question is very clear and specific. Has the few matters just mentioned been included in the report? Besides, why cannot the whole report be published for our information?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, after the Chief Executive's reporting visit to the state leaders, on that day — we take the most recent visit as an example — in the evening on 23 December 2015, the Chief Executive immediately informed the public through the media of the main contents of the visit, including some policy areas which need to secure support from the Central Authorities. As mentioned in the main reply, some examples are how Hong Kong can participate in the National 13th Five-Year Plan in accordance with the "one country, two systems" principle, and how Hong Kong can embrace the opportunities arising from the "Belt and Road Initiative", and so on. In terms of finance, we also hope that under the National 13th Five-Year Plan, apart from being a global hub for offshore Renminbi business, Hong Kong can also become an asset management centre.

In the press release issued by the Information Services Department at 8.24 pm that night, we can actually see that the Chief Executive has given us a detailed account in these few aspects. At the same time, the views of state leaders on these aspects have been reported through media coverage ...

**MR LEE CHEUK-YAN** (in Cantonese): *The Secretary has not answered my supplementary question. I do not want to waste the time of the Council. President, you have also heard that in fact I ...*

**PRESIDENT** (in Cantonese): Secretary, Mr LEE has particularly mentioned three items and asked whether the Chief Executive has mentioned them in the report to the Central Authorities. Please give specific answers in respect of the three items mentioned by Mr LEE.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Yes, President. Concerning the Chief Executive's reporting visit to the state leaders and the CPG, the usual practice is to make a summary report to state leaders on various aspects of Hong Kong, including the latest social situation, economic development, livelihood issues, and the political situation in Hong Kong. At the same time, on the development of various co-operative initiatives between the HKSAR and the Mainland, he will also report on matters which the Central Authorities need to know.

**MR LEE CHEUK-YAN** (in Cantonese): *President, a point of order. Please do a headcount. This will also give him an opportunity to think about how to answer, as he has basically not answered my supplementary question.*

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

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

**PRESIDENT** (in Cantonese): Secretary, before the headcount, you were answering the supplementary question raised by Mr LEE Cheuk-yan. Do you have anything to add now?

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, perhaps I will try to add three points.

First, as I started answering a moment ago, from what we understand from the Chief Executive's Office, the contents of the reporting visit mainly cover the situation of the HKSAR in the economic, social and political aspects, the work of the HKSAR Government and the matters for which the HKSAR Government intends to secure CPG's support. This is the first point that I have to add.

Second, after the Chief Executive's reporting visit in December last year, the media asked the Chief Executive whether some specific questions had been mentioned during the visit. The Chief Executive's answer was as follows: "I

report our work to state leaders of the highest level once every year. I will also put forward some requests and views to the Central Authorities to secure their support for the work of the HKSAR. Hence, we will mention any matter which involves joint development and co-operation between Hong Kong and the Mainland." What the Chief Executive meant is that the matters referred to earlier on will also be specifically mentioned.

Third, I would like to supplement that as said in the main reply, I believe that through various channels, the Central Authorities will have certain understanding on the few issues of concern mentioned by Mr LEE earlier. Besides, in regard to the issues of the Member's concern, I believe that with the Chief Executive receiving questions from Members at Legislative Council meetings, and the presence of the Secretaries of Departments and the Directors of Bureaux at various committee meetings to answer Members' questions, we have a lot of channels to continue following up on the above-mentioned issues of the Member's concern.

**MR GARY FAN** (in Cantonese): *President, Mr WANG Guangya, Director of the Hong Kong and Macao Affairs Office (HKMAO) of the State Council, mentioned in December 2013 that the reporting visits of the Chief Executive had to be standardized, and clear standardization was required in the contents of the reports for the duty visits.*

*President, I would like to ask the Secretary whether the CPG has required that the contents of the reports for the duty visits should include matters within the limits of Hong Kong's autonomy. During the Chief Executive's reporting visit, if the Beijing Government needs to put forward its views, is there any clear mechanism at present to ensure that the principle under Article 22 of the Basic Law, by which the Beijing Government shall not interfere in the affairs which the HKSAR Government administers on its own, will be respected?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, Mr FAN's supplementary question involves two parts. Let me answer the second part first.



Of course, the CPG and the HKSAR Government have been working in accordance with the Basic Law as well as the principles of "one country, two systems", "Hong Kong people administering Hong Kong" and "a high degree of autonomy". This applies to the contents and requirements of the reporting visits.

Secondly, Mr FAN just referred to the standardization mentioned by Director WANG Guangya. As we understand, the so-called standardization is mainly divided into two aspects. First, on the arrangements of a reporting visit, it is hoped that they can manifest the constitutional requirement under Article 43 of the Basic Law by which the Chief Executive shall be accountable to the CPG. The substantial manifestation of the so-called standardization mainly concerns the time and schedule of reporting visits. Based on the experience over the past decade, it is hoped that the arrangements can be more organized, so that when the CPG and the HKSAR Government are making the related arrangements, they can do them in a more orderly and effective way. This mainly refers to greater standardization in the arrangements.

**MR DENNIS KWOK** (in Cantonese): *President, the Hong Kong people have, on many occasions, learnt lessons from the Chief Executive's art of using weasel words. If we rely on him to disseminate to the public messages that can convince the people of Hong Kong, I am afraid it will be rather difficult. Therefore, Mr LEE Cheuk-yan raised this question, in the hope that we can see clearly what the Chief Executive has reported to the Central Authorities from the full report in black and white, so as to ascertain whether his reporting was pertinent. He thus asked why this report could not be made public, and whether there were any hidden secrets.*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, on 18 March last year, a Member raised a similar question in the Legislative Council. Please allow me to quote the answer of the Chief Secretary for Administration back then, as this can also answer the supplementary question of Mr Dennis KWOK.

As we understand, under the Basic Law, the Chief Executive is actually accountable to the CPG on the one hand, while of course accountable to the HKSAR on the other hand. Generally speaking, we call this "dual accountability". We understand that these are two different accountability systems and thus the corresponding arrangements will also be different. As

mentioned in the main reply, if Members find it necessary to follow up on the administration and measures of the Chief Executive in various aspects, we will, in accordance with the existing Basic Law, manifest the transparency of administration and the spirit of accountability, including receiving questions from Members in the Legislative Council. Therefore, we hope Members can understand that these are two different mechanisms serving different functions. And we are making corresponding and respective arrangements in accordance with the Basic Law and the "dual accountability" system.

**MR LEUNG KWOK-HUNG** (in Cantonese): *After listening to the reply of the Secretary, I understand why there is always a lack of quorum in this Council. This is because the Chief Executive usually discloses details of his reporting visits through press conferences, and many people make use of these press conferences to ask the Government questions. It is thus unnecessary for them to attend Legislative Council meetings. In December 2013, Director WANG Guangya asked the Chief Executive for standardization. After standardizing for two years, is he also subject to "investigations at the prescribed time and place"? The Secretary said this was not the case, as only the date and time have to be standardized. Is he speaking the truth? When the other party is so busy, can the Chief Executive inform Mr XI Jinping, the General Secretary of the Communist Party, when to meet? The arrangements are of course made by the other party. Hence, the Secretary was surely lying.*

*I now ask the Secretary a very simple question. There are various sessions in a reporting visit, right? Can the Secretary inform this Council that when the Chief Executive is paying reporting visit to different people in charge at different levels in the CPG, what aspects will he mention in the visit? What instructions will he receive? The instructions received may not have to be implemented. Can the Chief Executive inform this Council with a report? We can then ask the Chief Executive some questions with a copy of the report in hand. Otherwise, when he is talking nonsense in this Council, what should I do?*

*I now ask the Secretary one more time. For the standardization mentioned by Director WANG Guangya, does he ask the Chief Executive to state clearly on what areas of work should he report to the officials of different levels in the CPG? Does he require the Chief Executive to relay to the Hong Kong people exactly what the CPG has said? As such, XI Jinping does not need to talk about enhancing harmony so often ...*

**PRESIDENT** (in Cantonese): Mr LEUNG, you have already raised your supplementary question. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *LEUNG Chun-ying has not enhanced harmony. He is only repeating what he heard after listening to what XI Jinping has said to the reporters ...*

**PRESIDENT** (in Cantonese): Mr LEUNG, do not make further comments. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *My supplementary question is very clear.*

**PRESIDENT** (in Cantonese): Your supplementary question has already been clearly heard by me. Please sit down.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I believe that Members and the media are already getting used to this practice. They know that after more than 10 years since the return of Hong Kong to China, under the arrangements of reporting visits, the people to whom each Chief Executive has to report during his year-end Beijing duty visits are mainly the State President and the Premier of the State Council. During the Chief Executive's reporting visits in Beijing, he has some working meetings with the Ministries and Commissions concerned out of any needs in his work. For instance in December last year, the Chief Executive met the National Development and Reform Commission of the State Council to discuss the National 13th Five-Year Plan. He also discussed issues concerning creative industries with the Minister for Culture. These have been mentioned by the Chief Executive when he gave a brief account to the media about his reporting visits. I believe that pattern and institutional arrangement will also be followed in future.

**MR LEUNG KWOK-HUNG** (in Cantonese): *He has not answered my supplementary question.*

**PRESIDENT** (in Cantonese): Please repeat the part which you think the Secretary has not answered.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Yes, President. Will he first of all write down the purpose of his reporting visit in the Mainland, and when he comes back, will he tell us completely and fully the instructions from the CPG officials or what they have said in regard to the scope of his reporting visits ...*

**PRESIDENT** (in Cantonese): Mr LEUNG, Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *If he continues in this way, we will need to identify the problems concerned.*

**PRESIDENT** (in Cantonese): Mr LEUNG, other Members have actually asked this supplementary question. Secretary, do you have anything to add?

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, perhaps I will add one more point. During every reporting visit, particularly when paying duty visits to the State President and the Premier of the State Council, the media are of course allowed for news coverage in the first few minutes. After the reporting visit, apart from briefing the media on the subject matters that have been discussed, the Chief Executive will also briefly mention the responses of state leaders on such matters. Through the press release, the Central Authorities will, at the same time, also state the response of state leaders to the contents of the reporting visit, as well as their expectations for the Chief Executive of the HKSAR and the work of the HKSAR Government in the future. These will also be mentioned in the press releases issued by the Central Authorities. The few aspects that I mentioned just now are some open information.

(Mr LEUNG Kwok-hung stood up and asked again)

**PRESIDENT** (in Cantonese): Mr LEUNG, the Secretary has already given an answer. Please sit down.

**DR KWOK KA-KI** (in Cantonese): *President, I notice that since LEUNG Chun-ying assumed office, not only is his popularity getting rather low, but the confidence of the Hong Kong people in the CPG and in the state leaders like XI Jinping have also been lost. Earlier on, the Secretary kept on saying that the established system had been effective. However, I notice that the recent reporting visit of LEUNG Chun-ying is different from the reporting visits of the previous Chief Executives, as this has been downgraded. In the past, the Chief Executive could sit side by side with state leaders. But this time, he has to sit down and listen to an admonitory talk. This kind of reporting visit of LEUNG Chun-ying seems unable to obtain our trust. This also shows that he is unable to secure confidence from the Central Authorities in the administration of Hong Kong. The arrangements of this visit have rendered the HKSAR Government led by LEUNG Chun-ying shameful. At least the Hong Kong people feel humiliated, as the arrangements have kept on being downgraded. I would like to ask the Secretary what the reasons are. In terms of the reporting visits, does the Secretary think that their information should be open to the public? When Hong Kong people can also participate in such visits, and their wishes are not misunderstood by the Central Authorities, the relationship between Hong Kong and the Central Authorities will not be split further and dissension within society will not be intensified.*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, what Dr KWOK mentioned is the seating arrangement of the recent reporting visit. Article 43 of the Basic Law provides that the Chief Executive shall be the head of the HKSAR and, of course, shall be accountable to the CPG. In regard to the specific meeting venue and seating arrangements of the reporting visit, the HKMAO of the State Council has stated clearly this time that in the recent occasion, the arrangements are for better manifestation of the provisions concerning the relationship between the Central Authorities and the HKSAR under the Constitution and the Basic Law, as well as to render the requirement for the Chief Executive, as the head of the HKSAR and the head of the HKSAR Government, who shall be accountable to the Central Authorities more standardized and solemn. This is the clear explanation from the HKMAO of the State Council on the recent seating arrangement. I see that their

explanation only reiterates certain requirements under the Constitution and the Basic Law. They hope that the specific arrangement can manifest the constitutional requirements.

**DR KWOK KA-KI** (in Cantonese): *President, my supplementary question is very clear. I ask him to explain the reasons for being downgraded and whether there are any remedial measures. I want to ask the Secretary whether there are any remedial measures which can prevent Hong Kong from being encumbered by LEUNG Chun-ying and being further downgraded.*

**PRESIDENT** (in Cantonese): Dr KWOK, the Secretary has already given an answer. You just disagree with his viewpoint.

**MR PAUL TSE** (in Cantonese): *President, as we all know, the Chief Executive has to be accountable to the Central Authorities as well as to Hong Kong. In respect of being accountable to Hong Kong, we see that there are a lot of consultations and papers relating to the Policy Address, and the media keep on receiving information. The transparency is rather high. Nevertheless, the transparency is insufficient in respect of being accountable to the Central Authorities. Even on the issue of constitutional reform, a written report was all that we could see. The crux of the question is whether there are any measures to enhance the transparency of the Chief Executive's administration, especially his report to the Central Authorities. For example, we can refer to the practice in foreign countries. Even the top secret information can be released after certain years — only if there are written records — in this aspect, are there any measures to enhance the transparency of the report from Hong Kong to the Central Authorities?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): As we can understand, the papers concerning the Chief Executive's reporting visits have been handled in accordance with the existing rules of the Government in dealing with archival documents.

**PRESIDENT** (in Cantonese): This Council has already spent 22 minutes and 30 seconds on this question. Fourth question.

### **Issues Relevant to Recent Cases of Persons Missing**

4. **DR LAM TAI-FAI** (in Cantonese): *President, earlier on, five shareholders or employees of Causeway Bay Books were reported missing one after another, which has aroused wide public concern. It has been reported that the wife of one of the missing persons received consecutively two calls (the displayed caller number being a Shenzhen phone number) and a video footage from that missing person to assure her of his safety, and an associate of the bookstore received a handwritten fax from that missing person, disclosing that he had "returned to the Mainland using his own way to work with the authorities concerned in an investigation". Moreover, when commenting on the way through which that missing person entered the Mainland, the editorial of a mainland newspaper pointed out that "powerful agencies across the world generally have their own ways to circumvent the law and make a person under investigation work with them, so that they can proceed with their work without crossing the bottom line of the system". Also, a Member of this Council quoted a message from his friend saying that the five missing persons illegally entered the Mainland one after another to visit prostitutes and were arrested by public security authorities. Such remarks have sparked strong repercussions. The aforesaid cases have aroused concerns about whether the "one country, two systems" has been weakened, the way the Hong Kong Special Administrative Region (SAR) Government handles cases of Hong Kong residents reported missing, whether some persons have left Hong Kong by ways which circumvented the laws, whether mainland law enforcement officers have crossed the boundary to take law enforcement actions in Hong Kong, and whether the Government has assisted them in conducting investigations in Hong Kong. In this connection, will the Government inform this Council:*

- (1) *of the number of Hong Kong residents found after they had been reported missing, their conditions when they were found (i.e. whether they were alive or dead), the number of those who have not yet been found, the number of Hong Kong residents intercepted by law enforcement departments when they were trying to leave the territory illegally, and whether it knows the number of persons who successfully left the territory illegally, since the reunification;*

- (2) *whether it knows, since the reunification, if any government officials and officers of law enforcement departments of the Mainland conducted investigations in Hong Kong into criminal offences, commercial crimes, cases of persons missing, etc., and whether the SAR Government has provided assistance to them; if so, of the details; if not, the reasons for that; and*
- (3) *whether the SAR Government has sought, since the reunification, assistance from the mainland authorities to locate missing Hong Kong residents and the number of those who were found on the Mainland; if so, of the details; if not, the reasons for that?*

**PRESIDENT** (in Cantonese): I notice that all the Members who are now in attendance have to remain in the Chamber before a quorum can be maintained. In order to allow these Members time for lunch, I will suspend the meeting for 30 minutes after this oral question. Would Members in attendance please stay in the Chamber. Secretary, please reply.

**SECRETARY FOR SECURITY** (in Cantonese): President, the HKSAR Government attaches great importance to the cases of missing persons associated with a bookstore in Causeway Bay and fully understands the concerns of the community. With regard to the cases, the Police are now conducting proactive and comprehensive investigation.

My reply to Dr LAM Tai-fai's question is as follows:

- (1) The Police attach great importance to every case of missing person and will spare no effort in investigation. Upon receiving a report of missing person, the Police will dispatch officers to the last location where the alleged missing person was known to have been to as well as places where the missing person usually goes to in accordance with the information provided by the informant to conduct searching. The Police will also look for clues from various sources, including closed-circuit television footage, and so on, and contact people that the missing person knows so as to obtain more information about the missing person. In addition, depending on the actual circumstances, the Police will liaise with the Immigration



Department, Correctional Services Department and Hospital Authority, and so on, to locate the missing person. If necessary and with the consent of the family of the missing person, the Police will also appeal to the public to provide information about the missing person through television programme "Police Magazine", the Police's website as well as government press releases, and so on. If a Hong Kong resident is reported missing in other places, the Police will seek assistance from the co-operation units of the relevant places.

Amongst the missing person cases received by the Police between 1 January 2011 and 31 December 2015, 24 543 cases were closed. These include cases in which the Police have successfully found the missing persons or the Police could contact and confirm the identity of the missing persons after the informants have notified the Police that the missing persons had been found, as well as cases in which the Police have discovered objective and solid evidence after investigation which proves that the missing persons are safe and the Police could find no suspicion in such cases. Of the cases received in the same period, the Police are still conducting investigation for 133 missing person cases.

Part (1) of the main question mentions "Hong Kong residents leaving the territory illegally". The Immigration Department maintains effective immigration control at all control points. Passengers entering or leaving Hong Kong at sea, land or air control points shall produce a valid travel document. Eligible Hong Kong residents may present their valid Hong Kong identity cards for clearance.

The Immigration Ordinance (Cap. 115) empowers immigration officers to examine any person on his arrival or landing in or prior to his departure from Hong Kong or to require him to submit to further examination, and/or to furnish such information as may be required for this purpose. Any person who, without reasonable excuse, knowingly contravenes the requirements shall be guilty of an offence liable on conviction to a fine of \$120,000. The Immigration Department does not maintain relevant statistics of Hong Kong residents leaving Hong Kong without going through immigration clearance.

(2) and (3)

The Hong Kong Police have been maintaining a police co-operation mechanism with Mainland police authorities. Under the mechanism, if one party requires the assistance of the other party to conduct investigation, the requested party may gather information relevant to the case through legal means and provide such information to the requesting party. When the requesting party makes request for assistance, it must give prior notification to the requested party and explain clearly the nature of the case and the scope of the assistance sought for the investigation. It will then be for the law enforcement officers of the requested party to undertake the investigation work in accordance with the law. When conducting such co-operation, any law enforcement actions must only be taken by the local law enforcement agencies in accordance with the law. Under no circumstances can police officers of either side take enforcement actions in the territory of the other jurisdiction.

The above co-operation mechanism has been operating effectively. Under the mechanism, the two sides could communicate with regard to various cases or matters, including criminal cases, commercial crimes and missing person cases, and so on. Both sides have received assistance from the other side as well as useful information and some cases have even been solved. In the past five years, police authorities of the two places have made in total about 5 500 requests for assistance through the police co-operation mechanism.

In addition, upon receiving requests for assistance from Hong Kong residents in the Mainland and their case information, the Mainland offices of the HKSAR Government as well as the Assistance to Hong Kong Residents Unit of the Immigration Department will provide appropriate assistance, having regard to the nature and circumstances of the cases as well as the requests of the assistance seekers. Upon receipt of a report of a person suspected missing in the Mainland, the relevant department will liaise with its Mainland counterparts depending on the actual circumstances and seek their

assistance. The Police and the Immigration Department do not maintain statistics on missing Hong Kong residents who were found in the Mainland.

In respect of the missing person cases mentioned in the question, the Police have been seeking assistance from relevant Mainland police co-operation units via the police co-operation mechanism. On 18 January, the Police received a reply letter concerning one of the missing persons, Mr LEE Po, from the Interpol Guangdong Liaison Office of the Guangdong Provincial Public Security Department, which states that Mr LEE Po is in the Mainland. The Police have written to the Interpol Guangdong Liaison Office of the Guangdong Provincial Public Security Department on the same day, requesting to meet with Mr LEE Po and further understand the situation of the incident. Afterwards, the Police were informed by the wife of Mr LEE Po on 23 January that she had met with Mr LEE Po in the Mainland on the same day. According to Mrs LEE, Mr LEE Po was healthy and in good spirits, and he was assisting in an investigation in the capacity of a witness. After the meeting, Mr LEE Po asked her to pass on a letter to the Hong Kong Police. The letter's content was similar to previous letters penned by Mr LEE Po. Mrs LEE did not disclose any further details regarding the location of the meeting and the nature of the investigation Mr LEE Po was involved in.

The Hong Kong Police are now continuing to follow up on the case. In order to obtain further details of the circumstances of the case, the Hong Kong Police have issued another request on 23 January to the Guangdong Provincial Public Security Department to assist in arranging a meeting between Mr LEE Po and the Hong Kong Police.

Separately, the Immigration Department has, in accordance with the wishes of the family of one of the missing persons which has sought assistance from the Department, provided practicable assistance to the family.

**DR LAM TAI-FAI** (in Cantonese): *President ...*

**PRESIDENT** (in Cantonese): Dr LAM, please wait for a moment. This oral question and the first one are on the same incident. I approve the raising of these two questions at this meeting because the focus of this oral question is different from that of the first one. Would Members who intend to ask supplementary questions please be advised that issues which have been discussed during the first oral question should not be raised again now.

**DR LAM TAI-FAI** (in Cantonese): *President, are you aware that the Secretary's reply was not up to the point? The Secretary has not provided the figures which I ask for in parts (1) and (3) of the main question. How can I raise supplementary questions?*

**PRESIDENT** (in Cantonese): Dr LAM, please raise your supplementary question based on the Administration's main reply.

**DR LAM TAI-FAI** (in Cantonese): *President, when the Chief Executive went on his duty visit to Beijing last December, President XI stressed that the implementation of "one country, two systems" was unswerving, and it had to be ensured that there would be no "deformation" or "distortion" when "one country, two systems" was put into practice. However, let me tell the Secretary, if the SAR Government fails to properly handle this case of LEE Po, many Hong Kong people will think that the practice of "one country, two systems" has been "deformed", "distorted" and wavered.*

*President, I have said that the Secretary's reply is not up to the point, so I do not have a clue as to how to follow up. If I do, I will have digressed. Let me raise a question on the second oral question which Mr Alan LEONG asked earlier and which everyone would like to get a clear answer. I hope that the Secretary can answer.*

**PRESIDENT** (in Cantonese): Would Member please raise your supplementary question.

**DR LAM TAI-FAI** (in Cantonese): *Since Hong Kong has yet to enact legislation on Article 23 of the Basic Law, as a part of the country, if the SAR Government knows that a Hong Kong resident has done something which will jeopardize the country's sovereignty and security, will he be handed over to the Mainland government? If so, is the SAR Government blatantly undermining "one country, two systems"? If not, will the SAR Government become an accomplice in undermining the country's security and sovereignty?*

**PRESIDENT** (in Cantonese): Dr LAM, as you have said, you have asked this question before and the Secretary has also replied. There is no direct relationship between this question and this main question, but since you have raised it, I would ask the Secretary if he has anything to add.

**SECRETARY FOR SECURITY** (in Cantonese): President, the country implements, under the Basic Law, "one country, two systems", "Hong Kong people administering Hong Kong" and a "high degree of autonomy". Therefore, the SAR Government has to go by the law in all respects. I believe Members understand that at the moment, there is no agreement on the surrender of fugitives between Hong Kong and the Mainland, and we are deliberating on this. So, I cannot comment on Dr LAM's question about whether a person will be handed over to the Mainland. Regardless of what the issues are, we must uphold the principle of "one country, two systems". Nonetheless, since the laws practised in the Mainland and Hong Kong are different, the law enforcement agencies of the SAR Government will work according to the laws in Hong Kong within the Hong Kong SAR.

**DR LAM TAI-FAI** (in Cantonese): *President, I really cannot understand. Could the Secretary reply in simple words whether or not a Hong Kong resident who has jeopardized the country's security will be sent back to the Mainland?*

**PRESIDENT** (in Cantonese): Dr LAM, you have spent almost 15 minutes asking the main question and the supplementary question. There are seven Members queuing up to ask supplementary questions. The Secretary's reply just now was very clear, even I can comprehend. If you have any queries, I would suggest that you ask the Secretary again after the meeting.

**DR PRISCILLA LEUNG** (in Cantonese): *President, I have assisted in handling this kind of requests for assistance in the past. If they involve illegal detention, the victim's family members will receive a formal notification and will then seek assistance formally. As regards this present case of the disappearance of LEE Po, I do not think it involves illegal detention, and it is not a case of being released on bail or abduction. His family members in Hong Kong have dropped the case and this makes it difficult for the Police to follow up. In my opinion, the case may have gone beyond the scope covered by the notification mechanism between the two places. President, I would like to ask the Secretary how he sees this case which I consider as unsettled. If it has gone beyond the scope of the notification mechanism, what is the most possible assistance that the Government can offer? Moreover, is there a need to refine and expand the area of co-operation?*

**SECRETARY FOR SECURITY** (in Cantonese): Dr LEUNG, although our present discussion is focused on the notification mechanism, there is in fact another police co-operation mechanism in place. I have mentioned this in my main reply earlier but Members may not have paid attention to that. The notification mechanism covers two circumstances: unnatural deaths and criminal compulsory measures. As Mr Dennis KWOK has dwelled much on the imposition of criminal compulsory measures which are implemented under Mainland laws, I will not repeat here. If it falls within the scope of the notification mechanism, both sides will notify their counterparts as soon as practicable.

Moreover, we have a police co-operation mechanism in place. The scope of the police co-operation mechanism is even wider, covering not only the two circumstances clearly specified under the notification mechanism. Regardless of the nature of the case, we may seek assistance from the Mainland whenever necessary. The Hong Kong Police Force, by activating this police co-operation mechanism, has asked its counterpart to provide information on Mr LEE Po. We have actually received their reply. We have also asked them when we can meet Mr LEE and are awaiting their reply. Thus, in my opinion, up till now, this police co-operation mechanism on the whole can be said to be effective. As regards whether we can get all the answers, we still have to wait for further follow-up actions.

The Member has also asked if we need to do more. Of course, both sides will discuss the mechanisms at our regular meetings, and will discuss the aspects that can be further improved. We all attach great importance to the implementation of this mechanism. We will from time to time remind our respective officers that such a mechanism does exist and where necessary, some issues can be tackled through this mechanism. In the past, we have tackled many cases through this mechanism, for example, serious armed cases and even kidnap cases ...

**PRESIDENT** (in Cantonese): Secretary, please be concise.

**SECRETARY FOR SECURITY** (in Cantonese): Even for serious assault cases, we tackled them through this mechanism. Therefore, I think all these mechanisms have been working effectively.

**MR WU CHI-WAI** (in Cantonese): *President, the Secretary has spoken a lot on the mechanism. On 8 September 2013, the PAN Weixi couple were taken away. They were directly sent to Guangzhou to stand trial without going through the normal exit formalities, and were subsequently given jail sentence of 17 years and nine months. Similarly, LEE Po "returned to the Mainland on his own way" to assist in investigation without going through the proper exit channel. President, Hong Kong people are worried that, under the framework of the Basic Law, can "one country, two systems" safeguard the personal safety of Hong Kong people living in Hong Kong? These two cases have reflected that ...*

**PRESIDENT** (in Cantonese): Mr WU, please do not repeat.

**MR WU CHI-WAI** (in Cantonese): *Yes, President. In his main reply, the Secretary mentioned that a police co-operation mechanism was in place for the Mainland and the Hong Kong Police Force. In that case, with regard to these two cases, has the Mainland sought assistance from the Police in their investigation?*

**SECRETARY FOR SECURITY** (in Cantonese): President, for the PAN Weixi case, the police in Hong Kong received a report pointing to illegal detention and subsequent information also indicated that the couple were in the Mainland. Therefore, the Police took the initiative to seek assistance from the Mainland counterpart. Through assistance from the Mainland, we brought Mrs PAN back safely to Hong Kong but as the relevant Mainland authorities found that Mr PAN was at the same time involved in a case in the Mainland, they must handle him in accordance with their laws. As regards the subsequent developments, the Police have provided the relevant details when replying to media inquiry. On the second case ...

**PRESIDENT** (in Cantonese): Secretary, the Member's question was very clear.

**SECRETARY FOR SECURITY** (in Cantonese): Regarding the second case ...

**PRESIDENT** (in Cantonese): Secretary, please hold on. The Member has simply asked if Mainland law enforcement agencies have sought assistance from Hong Kong to facilitate investigation with regard to the two cases which he just mentioned.

**SECRETARY FOR SECURITY** (in Cantonese): I have replied to the Member's question on the first case: We sought assistance from them.

**PRESIDENT** (in Cantonese): Would the Secretary please be concise.

**SECRETARY FOR SECURITY** (in Cantonese): For the second case, let me tell the Member that since we have received a report, we have therefore sent a letter to ask for assistance from the Mainland authorities which have given us a reply.

(Mr WU Chi-wai stood up)



**PRESIDENT** (in Cantonese): Mr WU, you asked the Secretary if Mainland law enforcement agencies had sought assistance from Hong Kong and the Secretary had replied clearly.

**MR TAM YIU-CHUNG** (in Cantonese): *President, I would like to ask the Secretary about legal liability. If a Hong Kong permanent resident leaves the territory through improper means, is he legally liable? Has he broken the law? If he successfully returns to Hong Kong in the same way, is this against the law? Is he duty bound to tell the authorities how he left the territory?*

**SECRETARY FOR SECURITY** (in Cantonese): Whether it is in breach of the law to leave Hong Kong through improper entry and exit channels depends on the merits of each case. At present, immigration officers have the statutory power to conduct checks on anyone who leaves the territory via a control point and request him to submit the required information. If he fails to co-operate, the relevant department can surely follow up on the case. If he does not leave Hong Kong via a control point, for example, if he exits Hong Kong via a frontier closed area, he may have breached the legislation relating to frontier closed areas. If he leaves Hong Kong by boat, he is statutorily required to hand over his personal information to the captain who is obliged to submit to the Immigration Department information on the crew and passengers so that the Immigration Department may conduct immigration checks. The captain commits an offence if he fails to do so.

In a nutshell, it depends on the actual situation to determine which legislation should apply. With regard to this case, we still do not know how exactly it had happened and cannot therefore draw a simple conclusion. I have repeatedly stated that we will not make any inference, nor will we conclude from inference. We must investigate the case and get hold of hard evidence before arriving at a definite conclusion.

**PRESIDENT** (in Cantonese): We have spent almost 25 minutes on this question. The meeting will now suspend. Would Members please return to the Chamber before 1.25 pm.

12.54 pm

Meeting suspended.

1.24 pm

Council then resumed.

(THE PRESIDENT'S DEPUTY, MR ANDREW LEUNG, took the Chair)

### **Tourism Promotion Projects and Programmes**

5. **MR YIU SI-WING** (in Cantonese): *Deputy President, according to the latest statistics, the total, mainland and non-mainland visitor arrivals last year decreased by 2.5%, 2.9% and 1.2% respectively as compared with those of the year before, and the decrease in the second half of last year was higher than that in the first half. The business income of tourism-related industries, including the retail, catering and hotel industries, as well as tourist attractions has dropped significantly. Some members of the industries envisage that there is little sign of optimism this year. The Chief Executive has stated in the 2016 Policy Address that ...*

**MR CHAN CHI-CHUEN** (in Cantonese): *I request a headcount.*

**DEPUTY PRESIDENT** (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber, but some Members still did not return to their seats)

**DEPUTY PRESIDENT** (in Cantonese): Mr YIU Si-wing, please continue with your question.

(The Clerk indicated to the Deputy President that there was still one Member short of a quorum)

**DEPUTY PRESIDENT** (in Cantonese): Mr YIU, please hold on. We are still one Member short of a quorum. Would Members please return to your seats.

(A quorum was present in the Chamber)

**DEPUTY PRESIDENT** (in Cantonese): Mr YIU, please continue with your question.

**MR YIU SI-WING** (in Cantonese): *The Chief Executive has stated in the 2016 Policy Address that "[t]o move our tourism industry up the value chain, the Government will highlight the unique and diversified experiences Hong Kong offers and showcase our gourmet culture. It will also promote cultural and creative tourism, organize mega events, and draw more conventions and exhibitions to Hong Kong". However, the tourism promotion projects put forward in a paper submitted by the authorities to the Panel on Economic Development of this Council are all ongoing projects, except the theme-based exhibition area featuring local comic characters to be set up at the Golden Bauhinia Square, "Lumières Hong Kong" to be funded by the Mega Events Fund, the "Big Station" due to open soon in the Central and Western District, and the FIA Formula E Championship to be held in October which are new ones. Members of the tourism industry are therefore of the view that these projects would be of little help in enhancing the market competitiveness of the tourism industry. Quite a number of members of the tourism industry have relayed to me their hope that to allay their concern, the Government will give a clear account of the specific contents of the various tourism promotion projects and programmes which will be launched within this year. In this connection, will the Government inform this Council:*

- (1) *whether it has formulated short, medium and long term targets and measures to move the tourism industry up the value chain; if it has, of the details; if not, the reasons for that;*
- (2) *apart from the aforesaid tourism promotion projects, of the details of the tourism promotion projects and programmes which will be launched by the Government within this year, including whether there are specific effectiveness indicators; if there are no indicators, of the reasons for that; and*
- (3) *given that tourism-related industries are facing hardship amid a business downturn, whether the authorities have plans to allocate more resources to help those industries and the practitioners concerned to tide over the difficult times; if they do, of the details; if not, the reasons for that?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy President, my consolidated reply to the three parts of the question raised by Mr YIU Si-wing is as follows:

The tourism industry is a pillar industry of Hong Kong. It accounts for about 5% of our Gross Domestic Product and provides about 270 000 employment opportunities at different levels, making significant contributions to Hong Kong's economy and employment. The Government has been attaching great importance and giving staunch support to the development of Hong Kong's tourism industry, and devoting substantial resources for this purpose.

After the rapid growth over the past 10 years, Hong Kong's tourism industry has entered a consolidation period. In view of the change in the mix and spending pattern of visitors to Hong Kong, coupled with the competition posed by neighbouring travel destinations, we need to review the development strategy of Hong Kong's tourism industry. As the Chief Executive emphasized in the Policy Address this year, Hong Kong's tourism industry should not merely focus on the growth in tourist numbers, but should move towards diversified and high value-added services. Our goal is to strive for more diversified visitor source markets and attract more high-spending overnight visitors to Hong Kong.

In the light of the challenges currently faced by the tourism and retail sectors, the Government allocated additional resources in response last year. Additional funding of \$80 million was allocated to the Hong Kong Tourism Board (HKTB) for stepping up overseas promotion efforts. Subsequently, another \$10 million was allocated for setting up a one-off matching fund to encourage local tourist attractions to launch distinctive tourism products in collaboration with hotels, travel agencies, retail merchants, and so on, with a view to drawing more high-spending overnight visitors to Hong Kong.

The Government will continue to pursue different short, medium and long-term measures to cope with the changing circumstances with a view to reinforcing our strength and instilling new momentum into Hong Kong's tourism industry.

One key area of our work this year is to reinvent the positioning of Hong Kong's tourism image. We have tasked the HKTB to change the focus of promotion efforts from shopping to Hong Kong's diversified travel experiences, including Hong Kong's gourmet culture. The HKTB is formulating a new promotion strategy on Hong Kong's tourism image. We hope to highlight the edges of Hong Kong's gourmet culture in future promotion efforts, such as featuring the attractiveness of Hong Kong's gourmet through international media, and inviting Hong Kong chefs to perform at overseas promotion activities of the HKTB.

In addition, we will further develop cultural and creative tourism. Initiatives to be launched this year include: the "Hong Kong Comic Garden", adjacent to the Golden Bauhinia Square, to be open in May; the "Lumières Hong Kong" to be staged in Hong Kong for the first time in November; and the "Big Station" in the Central District (that is, the former Central Police Station Compound) to be open by phases this year. These initiatives showcase a mix of Hong Kong's history, culture and arts in different ways to give visitors diversified new experiences.

Different spectacular mega events will be held in town as well to attract more high-spending overnight visitors to Hong Kong, thereby bringing about more business opportunities for sectors including tourism, retail, food and beverage, hotels, and so on. Of these, a series of sports mega events will take centre stage. In addition to the well-received events including the Hong Kong Sevens, the Hong Kong Cyclothon, and so on, the FIA Formula E Championship

will be held in the New Central Harbourfront for the first time in October as the first stop globally for the 2016-2017 season. The HKTB will also continue to organize more large-scale mega events and strengthen promotion efforts. Furthermore, the Mega Events Fund is currently open to a new round of applications, and we hope that more mega arts, cultural, sports and entertainment events would be held in Hong Kong.

Some mega events, albeit existing ones, still play an important role in boosting Hong Kong's tourism industry. Events such as the International Chinese New Year Parade, the Hong Kong Dragon Boat Carnival and the Hong Kong Wine and Dine Festival have gradually built up reputations. We should push ahead with existing mega events and encourage the trade to launch related distinctive tourism products. We should also strengthen promotion activities to create a strong ambience of mega events, with a view to attracting more visitors to Hong Kong and extending their stay here.

Meetings, Incentive travels, Conventions and Exhibitions (MICE) as well as cruise tourism also draws high value-added visitors to Hong Kong. The HKTB will continue to strengthen promotion towards MICE event organizers and partner with professional associations and convention organizers so as to attract more MICE events to Hong Kong. Events successfully secured include the 55th Orient and Southeast Asian Lions Forum, the World Congress of Anaesthesiologists 2016, the 26th International Congress of The Transplantation Society, and so on. Meanwhile, we will continue to promote cruise tourism through the HKTB.

The two theme parks of Hong Kong will also continue to take forward their respective development plans. For the Hong Kong Disneyland, a new themed area based on Marvel's "Iron Man" franchise and a new hotel with a theme dedicated to the spirit of exploration will be open in 2016 and 2017 respectively. As regards the Ocean Park, the first hotel and an all-weather waterpark are expected to be completed in 2017 and the second-half of 2018 respectively.

On medium-term development, the West Kowloon Cultural District will be in the spotlight of cultural tourism. Facilities such as the Xiqu Centre and the M+ museum for visual culture will be successively completed in the coming few years. On long-term development, the Government is planning the development concerning the tourism node of Kai Tak Fantasy and Lantau with a view to developing these new strategic locations into new tourist attractions. The

Government will also continue the discussion on the further development of the Hong Kong Disneyland Resort (including the Phase 2 expansion) with The Walt Disney Company.

I believe Hong Kong is capable of providing visitors with unique and diversified travel experiences. The Government will maintain close collaboration with the trade, the HKTB and organizations related to the tourism sector and, subject to the needs of the industry, allocate additional resources as appropriate to support the further development of the tourism industry.

**MR YIU SI-WING** (in Cantonese): *Deputy President, the Secretary in his reply to the main question said more on short-term tourism measures, but on medium-term development programmes, he only mentioned the West Kowloon Cultural District, and this programme which is under the portfolio of the Home Affairs Bureau is of limited help to the sustainable development of Hong Kong's tourism industry. In the face of the coming hardship and external competition besetting Hong Kong, will the authorities seriously look into future development programmes in the medium and long term (especially in the medium term) and put forth proposals in a timely manner to consult the sector, so as to enhance the regional competitiveness of our tourism industry?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): I said in my main reply that in the medium term, we will develop the facilities in the West Kowloon Cultural District. As for long-term development, we are now planning the development of the tourism node of Kai Tak Fantasy and Lantau. For instance, the development area in the Kai Tak Fantasy project (that is, the former airport runway tip) is capable of being developed into a world-class tourism, entertainment and leisure hub. Not only can it provide services to Hong Kong people, it can also attract tourists around the world.

The Kai Tak Fantasy project will provide approximately 300 000 sq m in floor area for the development of hotels, restaurants, creative industries and for other business uses. In order to realize as early as possible the tourism node function of the project, the Development Bureau in fact already invited in last year end expressions of interest from market players, and the views and proposals received will serve as reference for the Government in drafting the detailed development requirements of the tender exercise.

Besides, I believe the Development Bureau has briefed Members on its work on Lantau. As a matter of fact, the Secretary for Development is the Chairman of the Lantau Development Advisory Committee and he confirmed earlier the strategic development proposals on Lantau. A public engagement exercise is now underway.

Deputy President, there are a number of Lantau development strategies on recreation and entertainment travel, in a bid to position Lantau as a diversified destination for recreation and travel. According to the proposal concerned, recreational and tourism facilities will mainly be located in northern and north-eastern Lantau, and southern Lantau will be suitably developed into a low-density leisure and recreational area. Hence, in the medium and longer terms, we have plans in place to enhance Hong Kong's tourist attractions, their facilities and tourists' experience.

**MR TONY TSE** (in Cantonese): *Deputy President, I am glad to hear the Secretary say in the main reply that a key area of work of the Government this year is to reinvent the positioning of Hong Kong's tourism image and diversify the development of tourism. Deputy President, in order to attract more tourists, we certainly cannot rely on gourmet or shopping alone. I believe we should also include more interesting things with local characteristics. This will make tourists' visits here more unforgettable and draw more tourists to Hong Kong.*

*Concerning the "Hong Kong Comic Garden" adjacent to the Golden Bauhinia Square and due to open in May, which was mentioned in the main reply, as we all know, some other venues in Hong Kong are also showcasing local comic characters. May I ask the Secretary how the "Hong Kong Comic Garden" to be set up by the Bureau will complement existing venues also displaying comic characters or how they can promote each other, so as to achieve better efficiency and more prominent results?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): I thank Mr TSE for the supplementary question. Actually, the "Hong Kong Comic Garden" can complement the cultural and creative facilities in Wan Chai. As we all know, there is a venue in Wan Chai known as the Comic Home Base which showcases the development of Hong Kong's comics,



their history and talents. Hence, a variety of unique creative cultures can be found in Wan Chai, and the "Hong Kong Comic Garden", in addition to the Comic Home Base, will further enrich tourists' experience in this regard.

In fact, what sets the "Hong Kong Comic Garden" in Wan Chai apart from the rest is that it will contain more interactive elements for tourists. For instance, they can take selfies with comic figures or with the three comic figures sitting on a mahjong table. The experience is somewhat different from what you experience at the Hong Kong Avenue of Comic Stars in Tsim Sha Tsui where you can find handprints of comic artists and sculptures of comic characters. Tourists can have a better idea of the talented comic artists in Hong Kong.

Besides, we will also partner with practitioners in the industrial sector, such as toy and electronic game designers, to conduct more crossover projects. It is hoped that through cross-sectoral co-operation, we can invite the comic and animation industry to participate in the tourism industry, and we can also make use of the services or products of other industries to increase tourism's market shares and bring about economic benefits.

**MR MA FUNG-KWOK** (in Cantonese): *Deputy President, tourism is an important pillar industry of Hong Kong, but tourism matters are now mainly co-ordinated by the Commerce and Economic Development Bureau, promoted by the HKTB and monitored with the assistance of the Travel Industry Council of Hong Kong (TICHK), and the Tourism Commission and its Commissioner are tasked with licensing matters. The work division is rather fragmented. I think this arrangement is undesirable. In the long run, we lack a dedicated department to take charge of planning and review. May I ask whether the Government has considered setting up a dedicated Policy Bureau to take charge of tourism matters in the long run?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy President, there is actually a dedicated government department, which is the Tourism Commission, responsible for co-ordinating tourism matters. In fact, each of the different organizations has its function. For instance, the HKTB is responsible for the overall promotion of tourism of Hong Kong, while the Tourism Commission is responsible for policy matters. Of course, as for matters such as tour groups, inbound tours or outbound tours,

they fall on the TICHK. This work division has been effective. As Members know, we have decided after consultation to establish the Travel Industry Authority (TIA). Regulatory work in the future will be taken up by the TIA. Hence, the overall operation in this matter has been effective and adjustment has been made based on present needs to establish the TIA. As for the work on establishing the TIA, we are now drafting the legislation concerned. Once completed, we will submit the bill to the Legislative Council for scrutiny.

**MRS REGINA IP** (in Cantonese): *Deputy President, just now, Secretary Gregory SO has mentioned many new activities and tourist attractions, but many of them are small-scale events or old events with new elements. I do not see how they can be of help in drawing more tourists to Hong Kong. The Secretary also mentioned the facilities soon to be completed in the West Kowloon Cultural District, that is, the M+ museum for visual art. As far as I know, the M+ museum will be 50% larger in area than the total area of all existing museums in Hong Kong. It is very big in area. May I ask the Secretary what exhibits or artifacts the M+ museum will have, which are better than those housed in famous western museums or those found in the Mainland, such that it can attract western or Mainland tourists to come here?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy President, as far as tourism development is concerned, we will hold certain mega events to this end, such as the Hong Kong Sevens and the Hong Kong Wine and Dine Festival which I just mentioned in the main reply. These events are held on a regular basis. Making these mega events our annual programmes will build up an ambience to make these attractions more appealing. In addition to these annual traditional programmes, we will also organize some large-scale mega events such as the Hong Kong Cyclothon just mentioned, which we organized for the first time last year, and also the FIA Formula E Championship which is a new large-scale mega event. As for comics ...

**MRS REGINA IP** (in Cantonese): *Secretary Gregory SO did not answer my supplementary question. I asked him what makes the M+ museum so attractive. It is he himself who said that the exhibits to be displayed in the M+ museum would be better than others. What is his point of telling me the Hong Kong Cyclothon?*

**DEPUTY PRESIDENT** (in Cantonese): Secretary, can you answer her question?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy President, Mrs IP said just now that these activities are of a small scale, and that is why I wish to explain that tourism must involve something held on a regular basis and something newly held, so as to give a new impression to tourists. She asked about M+ just now, and we will also have a new attraction there. I was just about to talk about the short, medium and long-term measures which Mr YIU Si-wing had asked. That is why my reply was set in this order. Regarding M+ in the West Kowloon Cultural District, given that the related project is under the portfolio of another Policy Bureau, I will provide a written answer to Mrs IP. (Appendix D)

**MRS REGINA IP** (in Cantonese): *Deputy President, Secretary Gregory SO does not even know what exhibits the M+ museum will have. Would he please do not read from the script.*

**MR FRANKIE YICK** (in Cantonese): *Deputy President, the tourist numbers have dropped rapidly and several related industries, including the retail and catering industries, have been gravely affected, and the logistics and transportation sectors are affected as well. Naturally, of these sectors, the first to bear the brunt is the non-franchised tour buses, that is, the coaches. Some practitioners in this business recently told me that their businesses dropped by about 50%, but their operation costs continued to increase; and their businesses would not be viable if the oil prices had not dropped recently. However, in his main reply, the Secretary did not respond to part (3) of Mr YIU Si-wing's main question: whether the authorities have plans to allocate more resources to help those industries and the practitioners concerned to tide over the difficult times. To facilitate the Secretary to reply, I wish to make a simple suggestion. Under the present difficult times, can the Government temporarily exempt the Kai Tak Cruise Terminal's parking fees for coaches?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy President, I mentioned in my main reply that we are aware of the recent challenges faced by the tourism and retail industries. We have thus

allocated additional resources to enhance our tourism appeal and provide more tourist attractions and mega events, so as to draw more tourists to Hong Kong. Last year, we allocated an additional funding of \$80 million to the HKTB for stepping up its efforts in attracting more tourists to Hong Kong and enriching tourists' travel experiences. Subsequently, we set up a matching fund to meet the needs of tourist attractions and the industries in taking forward tourism work. For instance, we have introduced the "Honest and Quality Hong Kong Tours" to inbound Mainland tour groups. This is done in response to the needs of tourism development. Hence, just now ...

**MR FRANKIE YICK** (in Cantonese): *The Secretary was not answering my supplementary question. He was saying how to attract tourists to Hong Kong. My question is whether the Government has any measures to assist the industries to tide over the present difficult times.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy President, in order to assist the industries in tiding over the difficult times, we mainly need to focus on enhancing our tourist facilities, so as to attract more high value-added visitors to Hong Kong. This will naturally be conducive to the industries.

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

### **Conservation of Built Heritage**

6. **MR MARTIN LIAO** (in Cantonese): *Deputy President, the Antiquities Advisory Board (AAB) published in January last year the Report on the Policy Review on Conservation of Built Heritage. AAB recommended in the Report that the Government should set up a dedicated fund on the conservation of built heritage to provide funding for public education, publicity activities, academic researches, as well as public engagement and consultation programmes. In his recently delivered Policy Address, the Chief Executive indicated that the Government would earmark \$500 million to implement AAB's recommendation for the establishment of the fund. However, some conservationists have pointed out that the Government has not put forward any specific proposals in respect of*

*AAB's recommendations on encouraging private owners to conserve their historic buildings and pursuing the conservation of historic buildings on the premise of respecting private property rights. In this connection, will the Government inform this Council:*

- (1) of the details of the work on establishing the aforesaid fund, including the work objectives, the timetable for accomplishing the various objectives and the performance indicators; whether the authorities will consider making the fund a statutory one;*
- (2) given that, as the first step to prepare detailed records of historic buildings, the Antiquities and Monuments Office (AMO) has deployed its work team to conduct 3D scanning for historic buildings which are either under threat or worthy of public viewing, whether AMO has selected the historic buildings according to their assigned grading; how AMO carries out the relevant work when owners of privately-owned historic buildings refuse to co-operate with AMO; and*
- (3) given that in recent years, quite a number of privately-owned historic buildings have been demolished before they are graded, of the experience which the Government has learnt from such cases and whether it has, in the light of such experience, formulated afresh a set of proposals on historic building grading and conservation which "respect our heritage while looking ahead"?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, the Honourable Members, in early 2013, the Government invited the Antiquities Advisory Board (AAB) to assist in the policy review on the conservation of privately-owned built heritage by making reference to the challenges met and experience gained in the conservation work over the past few years. The AAB completed the review in end 2014 and released the review report in early 2015. We welcomed the AAB's recommendations and subsequently set up task forces to carefully examine them. We announced that we formally accepted the AAB's recommendations in December 2015.

My reply to the various parts of Mr Martin LIAO's question is as follows:

- (1) In the 2016 Policy Address, the Chief Executive announced that resources would be earmarked to implement the AAB's recommendations, including the setting up of a fund dedicated to the conservation of built heritage administratively. The Government will first earmark \$500 million for the fund. We will set up, within this year, a committee comprising primarily non-official members to advise the Government on the operation of the fund.

The fund will finance two existing initiatives, that is, the Revitalizing Historic Buildings Through Partnership Scheme and the Financial Assistance for Maintenance Scheme for privately-owned graded historic buildings. For the latter, we will raise the grant ceiling for works projects and expand the scope of the scheme to cover all historic buildings for non-governmental use, such that more comprehensive maintenance works could be carried out. Further, the fund will support public education, community involvement activities, promotional activities and academic research. Our preliminary thinking is to collaborate with professional institutions and non-government organizations in enhancing community involvement activities, and to financially support current programmes such as the Friends of Heritage Scheme. We will also carry out a pilot study on the "point-line-plane" approach for conservation, and work with the AAB, experts and stakeholders to explore the way forward on this subject.

The AAB was of the view that the fund should be set up in the most effective manner. We consider that a fund of administrative nature can be established and start operating within a relatively short period of time. In the long run, we will not rule out the possibility of evolving towards a statutory fund given its merits. At this stage, setting up an administrative fund would be the first step to implement the AAB's recommendation. The organization and operation of the fund will be reviewed when appropriate in the light of the experience in running the fund to identify the best way forward in meeting the objective of the fund.

- (2) With additional staff, procured equipment and training, the Antiquities and Monuments Office (AMO) will commence 3D scanning for historic buildings within this year. The AMO will

determine the targets and the work priority in accordance with the heritage value of the historic buildings and the threats posed by development. Initially, 3D scanning will be conducted for declared monuments and the historic buildings scheduled for major restoration works by the AMO.

Generally, the AMO would approach the owners of the privately-owned historic buildings concerned to secure their consent before commencing on-site recording work. From past experience, these owners seldom refused the AMO's request for making cartographic records of their historic buildings. In case where the AMO is unable to enter a historic building to make records for any reasons (such as building conditions), it would conduct 3D scanning of the building's external elevations. Detailed records of historic buildings would be compiled in a reasonable and appropriate manner with due respect for private property rights and in the light of the practical environment and circumstances.

- (3) The current grading system for historic buildings is administrative in nature. It aims to provide an objective basis for determining the heritage value of individual historic buildings and the need for conservation.

We have put in place an internal mechanism for monitoring the demolition of or alterations to declared monuments and proposed monuments, as well as graded historic buildings and the buildings with proposed grading. The Buildings Department, Lands Department and Planning Department will alert the Commissioner for Heritage's Office and the AMO when they identify possible threat which may affect privately-owned monuments and historic buildings of heritage value that have been brought to the departments' attention by way of applications and enquiries received and in their normal course of duty such as regular inspections. These two Offices will then approach the owners of the privately-owned historic buildings concerned to explore conservation options.

We recognize that on the premise of respecting private property rights, appropriate economic incentives should be offered to encourage the private owners or in exchange for their consent to conserve historic buildings in their ownership. The current

economic incentives offered include compensation to private owners for their loss due to conservation of historic buildings. For example, private owners would be given policy support for their applications to relax the restrictions on plot ratio and/or site coverage in order to encourage them to adopt a "preservation-cum-development" approach in preserving and revitalizing their historic buildings. In response to the AAB's recommendations, we are carefully considering the provision of more attractive economic incentives beyond compensation according to the heritage value, scale and building conditions of privately-owned historic buildings. Other than the related policies, the provision of economic incentives involves public resources and financial commitment. As such, we will conduct in-depth study with reference to the practices overseas, so as to ensure the conservation of built heritage and respect for private property rights on the one hand, and to strike a balance between financial consideration and public interests on the other.

**MR MARTIN LIAO** (in Cantonese): *Deputy President, according to part (3) of the authorities' main reply, regarding conservation of privately-owned historic buildings, the Government has to discuss with private owners. I would like to ask a supplementary question: In the light of the experience gained from previous cases, how is the Government going to enhance owners' knowledge of its proposals on conservation and related tasks, so as to alleviate their resistance to grading, so that owners are more willing to consider accepting the economic incentives offered by the Government to conserve the historic buildings owned by them?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, I thank Mr Martin LIAO for his supplementary question. Deputy President, throughout the process, promotion and education as well as enhancing the public's awareness of historic building conservation are the most important tasks. We will strive to step up efforts in these areas after establishing the fund. Moreover, as mentioned by Mr LIAO, these historic buildings all involve private property rights. When development is carried out, we must explore if it is possible to come up with a compromising proposal under which owners do not have to suffer losses on the one hand, while conservation can be carried out on the other. In



this respect, the Government has made available various economic incentives for owners' consideration, and we will continue with our discussion and communication with owners in accordance with established practices.

**MR ABRAHAM SHEK** (in Cantonese): *Deputy President, though the authorities had provided numerous economic incentives in the past, many private owners still declined the offers, resulting in the demolition of a large number of monuments. How will the earmarked \$500 million be used? Will the sum be used for compensation, education or for the AMO to carry out its tasks?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, thanks to Mr Abraham SHEK for the supplementary question. Deputy President, \$500 million may not be a massive sum, which is not sufficient for offering compensation for conservation works or purchasing historic buildings. Different views were expressed during AAB's policy review. The general view received is that it will cause fierce controversy if it is made mandatory for the Government to purchase historic buildings with public monies, or exercise public power to restrict the development of such buildings. The community also believes that it is also important to protect private property rights and the rights to development. Therefore, the \$500 million earmarked will not be used this way.

The amount will mainly be spent on a few areas. First, the Revitalizing Historic Buildings Through Partnership Scheme will go on, engaging non-profit making organizations to advise on adaptive re-use of some government-owned historic buildings. If necessary, subsidises will be granted in the first two years of operation.

On the other hand, even if privately-owned historic buildings are not going to be developed, they still require repair and maintenance, which is the second area that we plan to provide subsidies.

The third area is public education and promotion. Public views collected during the policy review consider that it is helpful for professional organizations or non-profit making organizations to conduct more promotion and education activities in society. For example, some professional institutes have recently arranged guided tours for the public to visit a few conservation sites, introducing to them the histories and stories of the places, which have aroused keen interest among the participants. We believe that it is good to organize more of these

activities so that the people will treasure these historic buildings all the more. Then, when the buildings undergo development, it will stand a better chance for private owners to accept proposals that may cater to development needs on the one hand, while making it possible to conserve the major components of these buildings on the other. This is the main focus of our work.

**MR JEFFREY LAM** (in Cantonese): *Deputy President, the original purpose for the Government's declaration of buildings as proposed monuments is to give the Government an opportunity to discuss relevant terms with owners, or conduct studies on the conservation value of these buildings. However, there are always big differences in opinions due to many reasons, probably including such other factors as owners' memory of their time there, rendering them unwilling to accept land exchange offers. But section 8 of the Antiquities and Monuments Ordinance stipulates that the Administration or the court may determine the amount of compensation in accordance with the Ordinance, an arrangement disagreed by many in the past. Also, some other people believe that the Government should handle the issue flexibly.*

*So, will the Government consider setting up an arbitration mechanism so that such cases may be referred to an independent third party for mediation?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, I thank very much for Mr Jeffrey LAM's supplementary question. His point is very correct. Certainly we had provided various economic incentives in relation to the conservation of historic buildings in the past. Among these incentives, we even tried to offer land exchange for Grade 1 historic buildings. King Yin Lei is a well-known example. Another notable example is Ho Tung Gardens but our conservation plan for which has failed.

As Mr Jeffrey LAM has pointed out, the Government's previous declaration of Ho Tung Gardens as a proposed monument was done with the aim of allowing a year's time for discussion with the owner for reaching a compromising proposal. In the case of this site, the conservation effort failed. To our regret, the property was subsequently sold for more than \$5 billion, and was demolished then. Members may have already learnt this from the press.

Under existing legislation, after the Government has declared a certain building as proposed monument, even if the owner concerned disagrees with the declaration, he can do nothing except lodging compensation claims through court

proceedings if the Government insists on its declaration of the building as a monument. Such a relatively confrontational approach is not the best way after all. Therefore, we very much hope to handle these issues by means of deliberation and consultation. We are now applying this approach on another Grade 1 historic building, and the parties involved are currently in the process of discussion. Yet another building is also going through a similar process. Unless it is really inevitable, we do not wish to have such cases brought to court.

As to whether an arbitration mechanism just mentioned will be set up, we do not plan to do so at the moment as this probably would not be too helpful in resolving the problems. We still spare no effort in identifying a proposal acceptable to all, so as to reach an effective solution.

**MR TONY TSE** (in Cantonese): *Deputy President, conservation of historic building is an issue of wide public concern, and I also hope that the Government does not simply focus its conservation policies on preservation, but attaches equal importance to revitalization and care of the buildings. Only then can this be called conservation.*

*Making optimal use of historic buildings often involves alteration works. Deputy President, generally speaking, these alternations mainly have to be carried out in compliance with requirements under the Buildings Ordinance which is basically targeted at new buildings. It is indeed very difficult, if not impossible, for historic buildings to comply with those requirements. Therefore, will the Government make reference to practices in other countries or regions in this respect, and enact legislation that are more suitable for historic buildings, so that these buildings can fulfil safety regulations while optimizing the usage without facing too many constraints.*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, the supplementary question raised by Mr Tony TSE is a very correct. The professional sector has expressed many valuable opinions during our review, including the views on certain existing requirements under ordinances related to the Buildings Department and the Fire Services Ordinance. Similar to the remarks pointed out by Members, applying these requirements on historic buildings will cause considerable constraints, as those rules mostly target new buildings. While the buildings may not satisfy those requirements, it will incur huge costs even if the buildings are made to meet the requirements. Throughout

the process, we have attached much importance to the issue. I have assigned the Under Secretary for Development to follow up on the case by engaging professional groups and individuals (professionals included) involved in several successful conservation projects for historic buildings, so that they can join effort with the departments concerned and identify areas where experience can be drawn and appropriate adjustments can be made. As far as I know, the Buildings Department will publish a Practice Note for historic buildings in the first quarter of this year, providing guidelines to the sector on some frequently asked questions. We all understand that safety is the main concern in dealing with these historic buildings: structural safety and fire safety. The said Practice Note will likely be available in the first quarter of this year.

Furthermore, there will be another manual of practice. We plan to publish two issues of the manual within this year. Past examples of built heritage conservation works over the years will be provided as illustration, covering the problems, the solutions and the use of a performance-based approach instead of resolving the issues simply by adhering to the rules. We hope the manual can be helpful, and we are duty bound to see if there is any room for improvement.

**MR CHAN HAK-KAN** (in Cantonese): *Deputy President, as the Secretary has indicated, the \$500 million fund will mainly be used for subsidizing revitalization and repair works, yet this is not the solution for conflicts between development and conservation. If the Government truly wants to further conserve these privately-owned buildings and land, it invariably has to deal with ownership issues. That is why the Democratic Alliance for the Betterment and Progress of Hong Kong has earlier proposed setting up a fund to conserve buildings and land considered necessary to be conserved by way of purchase or lease through government funding and private financing. I want to ask the Secretary: Will he consider expanding the scope of the fund after it is set up? Will he consider increasing the amount of the fund for the purpose of purchasing privately-owned buildings and land with conservation value?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): I thank Mr CHAN Hak-kan for his question. Deputy President, as I have mentioned in my reply to Mr Abraham SHEK, if the sum of \$500 million is used for purchasing historic buildings, the amount is just minimal in the light of the current level of property prices in Hong Kong. The \$500 million will mainly be spent on conservation, revitalization and education. As I have just said, vastly different opinions have

been expressed during the recent consultation exercise on using public funds to purchase historic buildings. Also, the financial burden involved will be rather heavy. I am sorry that we do not have such plan at this stage.

**MRS REGINA IP** (in Cantonese): *I wish to ask Secretary Paul CHAN: Does the AAB have a self-review mechanism? I find it rather odd that, for example, the West Wing of the former Central Government Offices, declared as Grade 2 historic building originally, suddenly becomes a Grade 1 building. Architecturally the building is not unique at all, and is dilapidated. Civil servants who worked there generally believe that the building should be demolished. The Secretary is in charge of land administration, and knows very well that Grade A offices are in severe shortage. In fact, is it worthy to conserve the West Wing office as a Grade 1 historic building? Can the AAB do any reviews?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): I thank Mrs Regina IP for her question. Mrs Regina IP, assessment of buildings consists of two levels: the first level involves a proposed grading given by an Expert Panel under which the buildings are assessed against six criteria, namely historical interest, architectural merit, group value, social value and local interest, authenticity, and rarity. The proposed grading will then serve as reference for the AAB when it finalizes the grading at its meetings. Under the existing system, there is no mechanism to review the decisions made by AAB. The situation referred to by Mrs Regina IP had happened before. Also, there have recently been cases like the Tung Tak Pawn Shop case. Tung Tak Pawn Shop was a Grade 3 historic building at the time when its demolition was announced, yet some members of the public considered that the building deserved higher grade and should not be demolished. They therefore submitted additional information for AAB's consideration. The grading eventually remained unchanged after AAB took account of this additional factor. However, under the present mechanism, this is the final decision. No appeal mechanism is available at the moment.

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

**WRITTEN ANSWERS TO QUESTIONS****Employment of Construction and Related Engineering Professionals by Government**

7. **IR DR LO WAI-KWOK** (in Chinese): *President, currently, several government departments (including Planning Department, Housing Department, Civil Engineering and Development Department, Drainage Services Department, Water Supplies Department, Electrical and Mechanical Services Department, Transport Department, Highways Department and Environmental Protection Department) have employed persons of the construction and related engineering professions (the relevant professions). Some of those people are civil servants, while some others are employed on non-civil service contract (NCSC) terms. Some of these NCSC staff have relayed to me that the fact that their remuneration packages are inferior to those of civil servants who have comparable responsibilities (which means different pay for the same work) coupled with the uncertain job prospects have affected their morale. In this connection, will the Government inform this Council:*

- (1) *in each of the past five years, (i) of the respective numbers of NCSC staff and civil servants in the relevant professions who were employed by the aforesaid government departments, and (ii) among them, the number of NCSC staff who had been employed for five consecutive years or more;*
- (2) *whether it has formulated specific plans to assist those NCSC staff who have relatively long service years and whose positions have long-term service needs in being appointed as civil servants; if so, of the details; if not, the reasons for that; and*
- (3) *given that a number of infrastructure projects (including the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link project as well as the Hong Kong-Zhuhai-Macao Bridge Hong Kong Boundary Crossing Facilities and Hong Kong Link Road projects) in recent years have experienced delays, coupled with the occurrence of incidents in which drinking water samples were found to have a lead content exceeding the provisional guideline value set by the World Health Organization, whether the various government departments have plans to create more posts of the relevant*

*professions and improve the remuneration packages for such professionals to retain talents, with a view to enhancing the planning and monitoring standards of the various projects; if they do, of the details; if not, the reasons for that?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, my reply to Ir Dr LO's question is as follows:

- (1) Breakdowns of the number of civil service staff and full-time non-civil service contract (NCSC) staff in construction and related engineering professions (the relevant professions<sup>(1)</sup>) in the departments mentioned in the question and the number of contract staff in the relevant professions in the Housing Authority (HA)<sup>(2)</sup> in the past five years are set out in Annexes 1 and 2 respectively.

(2) and (3)

On increasing the manpower of the relevant professional grades, the Government's guiding principles for considering the creation of additional civil service posts are as follows: when the operational need is fully justified; and the work involved cannot be handled by streamlining the procedures, re-organization, re-deployment of existing staff or any other means. The above principles are applicable across all the civil service grades, including relevant professional grades. Increased manpower will be arranged as and when it is fully justified on the grounds of maintaining effective operation and addressing the manpower needs arising from new and improved services, including enhancement of the planning and supervision standard for various works projects. In determining whether a contract position of NCSC Scheme/HA should be replaced

- (1) The relevant professional grades in this reply refer to Architect, Building Services Engineer, Building Surveyor, Electrical and Mechanical Engineer, Electrical Engineer, Electronics Engineer, Engineer, Estate Surveyor, Geotechnical Engineer, Land Surveyor, Landscape Architect, Maintenance Surveyor, Mechanical Engineer, Planning Officer, Quantity Surveyor, Shift Charge Engineer, Structural Engineer, Town Planner, Cartographer, Chemist, Environmental Protection Officer and Waterworks Chemist.
- (2) The Housing Department is the executive arm of the Hong Kong Housing Authority. As a statutory organization with financial autonomy, the HA employs contract staff under its own terms. As such, the HA's contract staff and the contract staff under the Non-Civil Service Contract Staff Scheme belong to different categories.

by a civil service post, we have to ascertain whether the work involved is of a sufficiently permanent nature and whether it should more appropriately be handled by a civil servant.

From 2013-2014 to 2015-2016, bureaux/departments were supported to create 711 civil service posts in the relevant professions. Among them, 130 posts were created to replace the NCSC positions and 18 were to replace the contract positions in the HA.

Regarding the conversion of NCSC staff and the HA's contract staff into civil servants, the Government follows the established policy of selecting the most suitable persons to fill civil service vacancies through an open, fair and competitive process. As relevant working experience is one of the factors taken into account in the recruitment of civil servants, contract staff who meet the entry requirements do generally enjoy a competitive edge over other applicants because of their working experience in the Government. For the civil service open recruitment exercises held for the relevant professional grades<sup>(3)</sup> between January 2007 and August 2015, the average success rates for NCSC staff and other applicants were around 31% and 7% respectively. As for the relevant professional grades in the Housing Department, the average success rates for the HA's contract staff and other applicants were around 90% and 9% respectively.

As regards the remuneration packages for the civil service posts in the relevant professions, the Government would continue to implement the established civil service pay policy, which is to offer sufficient remuneration to attract, retain and motivate staff of suitable calibre to provide the public with an effective and efficient service; and to ensure that the remuneration of these posts will be regarded as fair by both civil servants and the public they serve by maintaining broad comparability between civil service and private sector pay.

(3) For the civil service open recruitment exercises launched and completed during this period, 159 exercises involved qualified applications from serving NCSC staff performing comparable duties to the ranks under recruitment. As for the Housing Department, there were 10 exercises that involved qualified applications from serving contract staff of the HA performing comparable duties to the ranks under recruitment over the same period.



## Annex 1

Number of Civil Service Posts in Construction and Related Engineering  
Professions in the Following Departments in the Past Five Years  
(Position as at 31 March 2015)

<i>Department</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
Civil Engineering and Development Department	523	526	536	547	596
Drainage Services Department	297	300	309	309	323
Electrical and Mechanical Services Department	342	368	381	391	398
Environmental Protection Department	454	470	481	487	533
Highways Department	472	480	483	492	502
Planning Department	241	248	257	255	275
Transport Department	167	168	170	174	181
Water Supplies Department	331	335	336	337	343
Housing Department	718	729	830	869	931
<b>Total</b>	<b>3 545</b>	<b>3 624</b>	<b>3 783</b>	<b>3 861</b>	<b>4 082</b>

## Annex 2

Number of Full-time NCSC Staff Employed by the Departments and Contract  
Staff of the HA Performing Comparable Duties of the Construction and Relevant  
Engineering Professions (the Relevant Professions) Over the Past Five Years  
(Position as at 30 June 2015)

	<i>2011</i>		<i>2012</i>		<i>2013</i>		<i>2014</i>		<i>2015</i>	
	<i>Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades</i>	<i>Number of staff among them with continuous service of five consecutive years or more</i>	<i>Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades</i>	<i>Number of staff among them with continuous service of five consecutive years or more</i>	<i>Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades</i>	<i>Number of staff among them with continuous service of five consecutive years or more</i>	<i>Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades</i>	<i>Number of staff among them with continuous service of five consecutive years or more</i>	<i>Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades</i>	<i>Number of staff among them with continuous service of five consecutive years or more</i>
Civil Engineering and Development Department	19	1	16	0	21	0	32	0	18	1

Relevant professional grades	2011		2012		2013		2014		2015	
	Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades	Number of staff among them with continuous service of five consecutive years or more	Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades	Number of staff among them with continuous service of five consecutive years or more	Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades	Number of staff among them with continuous service of five consecutive years or more	Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades	Number of staff among them with continuous service of five consecutive years or more	Number of NCSC staff/HA's contract staff performing the duties of the relevant professional grades	Number of staff among them with continuous service of five consecutive years or more
Drainage Services Department	16	2	17	2	14	1	16	5	18	2
Electrical and Mechanical Services Department	97	7	79	8	67	8	53	9	42	11
Environmental Protection Department	42	3	43	5	38	3	39	7	26	4
Highways Department	24	9	21	3	35	3	46	3	45	2
Planning Department	13	0	4	0	4	0	10	1	15	2
Transport Department	8	1	6	1	7	1	5	0	7	1
Water Supplies Department	14	0	8	0	4	0	8	0	6	0
Housing Department	24	21	23	20	20	19	18	18	15	15
Total	257	44	217	39	210	35	227	43	192	38

### Designation of South East New Territories Landfill for Receiving only Construction Waste

8. **MR IP KWOK-HIM** (in Chinese): *President, in view of the growing residential developments in Tseung Kwan O district and local residents' concern over the odour arising from the South East New Territories Landfill (SENT Landfill), the Government has amended the legislation to require that the Landfill (and its extension) be designated for receiving only construction waste, and that municipal solid waste (i.e. domestic waste and commercial and industrial waste) and other waste be diverted to other waste management facilities. The diversion plan has been implemented since the 6th of this month. In this connection, will the Government inform this Council:*

- (1) *whether it knows the numbers of housing estates and buildings from which the domestic waste delivered to SENT Landfill for disposal in the past three years came, and the geographical distribution of such housing estates and buildings;*
- (2) *given that some of the waste collection routes have to be changed as a result of the implementation of the diversion plan, and that a longer travelling distance will incur more expenses, such as fuel cost, and reduce the number of times a refuse collection vehicle can transport waste each day, whether the authorities have estimated the additional expenditures arising from the diversion plan on the part of the Food and Environmental Hygiene Department (FEHD), its outsourced waste collection contractors as well as private waste collectors; if they have, of the details, and the average amount of additional waste collection service charges to be borne by each residential unit; if not, the reasons for that;*
- (3) *whether FEHD has received requests from its outsourced waste collection contractors for adjusting contract service charges for the reason that the operating costs have increased as a result of the diversion plan; if FEHD has, of the additional amount of expenditure involved each year; if not, the reasons for that; and*
- (4) *whether there are objective data showing that the air quality of Tseung Kwan O district has improved upon implementation of the diversion plan?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President, the Administration made an amendment regulation on 22 January 2014 to change the use of the South East New Territories (SENT) Landfill to receive only construction waste. The amendment regulation has become effective since 6 January 2016, with all non-construction waste including municipal solid waste (MSW) (that is, domestic waste and general industrial and commercial waste) and special waste not allowed for disposal at the SENT Landfill. Instead, this waste would need to be delivered to refuse transfer stations (RTSs) or the other landfills for disposal. Accordingly, the Environmental Protection Department (EPD) has implemented a waste diversion plan with the aim of redistributing the waste being

delivered to RTSs and landfills based on the available spare capacity of these waste management facilities. To facilitate the above arrangement, the Food and Environmental Hygiene Department (FEHD) has adjusted some of its refuse collection routes by which waste is diverted away from the areas affected by the waste diversion to other RTSs and landfills as assigned by the EPD, so as to make available sufficient handling capacity for the waste diverted from the SENT Landfill.

Our reply to the question raised by Mr IP Kwok-him is as follows:

- (1) Based on the 2013-2015 data, the SENT Landfill received an average of about 1 700 tonnes of MSW per day, among which 640 tonnes were domestic waste. Among the domestic waste, 44% was from Kowloon, 17% from Hong Kong Island and the remaining 39% from the New Territories and Outlying Islands. Regarding the number of estates/buildings involved, the EPD does not have such information;

(2) and (3)

In support of the waste diversion plan, the FEHD's re-routing of its own and its contractors' refuse collection service at individual districts incurs in total extra annual expenditure of about \$40.3 million. Currently, more than 80% of the domestic waste arising in Hong Kong is collected through the free service provided by the FEHD and its contractors. Hence no extra refuse collection fee is incurred by the residents of those estates/buildings covered by the service. For private waste collectors, they would adjust and optimize their collection routes and operation mode and consolidate their clients to cope with the new waste diversion arrangement, so as to achieve maximum cost-effectiveness. If such adjustment could not fully offset the increase in operating cost, they would negotiate for service fee adjustment based on their commercial considerations and the situation of individual clients. The EPD does not have data on the extra operating costs incurred by private waste collectors and the amount of extra service fees to be shared by each flat of those estates/buildings engaging private waste collectors; and

- (4) The EPD has commenced by stages since December last year the testing of the new general air quality monitoring station at Tseung Kwan O, with a view to fully commissioning the operation of the station in March this year. Due to similarity in geographical locations and land use, the data obtained during the testing period indicated that the air quality in Tseung Kwan O has remained broadly similar to that in the Eastern District and Sha Tin. There has not been any change in the air quality since the new arrangement of the SENT Landfill accepting only construction waste. On the other hand, since the implementation of the new arrangement, the EPD has not received any odour complaints again.

### **Management of Roadside Skips**

9. **MS STARRY LEE** (in Chinese): *President, it has been reported that skip operators from time to time place their skips at roadside in various districts across the territory and most of them do not comply with the relevant guidelines issued by the Transport Department. Those guidelines include: affixing reflective strips in alternate red and white to the four vertical edges of a skip, marking the company name(s) and emergency contact telephone number(s) on the two sides of a skip at an elevation of 1.5 metres above ground level, and, during the hours of darkness, attaching yellow flashing lights to each upper corner of a skip or placing traffic cones around a skip with yellow flashing lights being placed on traffic cones. Furthermore, a roadside skip placed on a two-lane two-way road often takes up more than half of a lane, making it necessary for vehicles passing by to run in the opposite direction of the traffic when they detour around the skip, which may easily result in traffic accidents. On the other hand, some skip operators have pointed out that currently there is insufficient space for placing skips and they have no choice but to place their skips at roadside. In this connection, will the Government inform this Council of:*

- (1) *the number and contents of the complaints about roadside skips received, and the number of skips removed, by the authorities in each of the past three years, with a breakdown by District Council district; the number of cases in which prosecutions were instituted against skip operators by the authorities in each of the past three years, the number of convicted cases and the penalties generally imposed by the court on the convicted persons;*

- (2) *the number of traffic accidents involving roadside skips in each of the past three years, the causes for such accidents and the resultant casualties;*
- (3) *the details of the regulatory work currently conducted by the authorities on roadside skips, including arrangements for the division of work among the relevant government departments and ways by which roadside skips are handled; and*
- (4) *the details and progress of the authorities' work on identifying suitable sites for storing skips?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President, the Administration attaches great importance in tackling the problems caused by roadside skips, and has set up a Joint Working Group (JWG) led by the Environment Bureau and Environmental Protection Department to actively investigate ways to enhance and co-ordinate the work of relevant government bureaux and departments in managing roadside skips. The JWG comprises Transport and Housing Bureau, Development Bureau, Food and Environmental Hygiene Department, Home Affairs Department<sup>(1)</sup>, the Hong Kong Police Force (HKPF), Highways Department, Lands Department (LandsD) and Transport Department.

The review conducted by the JWG found that the main reason of placement of skips at roadside locations under complaint was due to a lack of proper storage locations, in particular during the night time. The skip operators placed their idling skips on the roadside for convenience. As the root of the problem is due to a lack of proper storage locations for idling skips, relying solely on enforcement of relevant laws would not be able to resolve the problem. To tackle the issue, and in order to reduce the number of skips placed in public areas, our priority is to provide proper storage areas for placing skips, to be backed up by speedy removal of roadside skips that caused obstruction to traffic so as to further deter malpractices of the skip operators. We believe that these two measures, which can be implemented in a relatively shorter time, should effectively alleviate the problems caused by roadside skips.

(1) To attend on a need basis.

Our responses to the specific questions raised by Ms Starry LEE are as follows:

- (1) The LandsD received 627, 1 164 and 858 complaints about roadside skips and removed nine, 14 and eight skips in 2013, 2014 and 2015, respectively. Other than those skips removed by the LandsD, the concerned skip operators had removed the other skips by themselves before the deadlines in the notices posted by the LandsD according to section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28). The LandsD had successfully prosecuted a case involving roadside skip, and the defendant was fined \$1,500 by the Court.

The HKPF received 783, 1 208 and 1 230 complaints about roadside skips in 2013, 2014 and 2015, respectively. Advice and/or warnings were given by the HKPF under the Summary Offences Ordinance (Cap. 228), such that the majority of the skips under complaint (over 80%) were removed by the skip operators themselves within a few hours after issuance of the advice/warnings. The number of skips removed by the HKPF's contractor was one in 2013, five in 2014 and four in 2015. The number of summons for prosecution issued by the HKPF was one in 2013, 13 in 2014 and 10 in 2015. Among these 24 prosecution cases, 21 cases were convicted and the defendants were fined from \$450 to \$2,500 by the Court, and the remaining three cases are still under court proceedings.

Please refer to the Annex for the statistics of the numbers of roadside skips complaints received and skips removed by District Council districts and by police districts in the past three years.

- (2) There were a total of 10 traffic accidents involving roadside skips in the past three years, all of which occurred at night (between 7 pm and 7 am) and resulted in 14 casualties with slight injuries. Investigations by the HKPF revealed that majority of the accidents were related to driving attitude, and four drivers were prosecuted for careless driving, with one of the drivers also charged with drink driving. In all these 10 accidents, the skips concerned were idling and placed at roadside without any loading or unloading activities.

Below is the number of traffic accidents involving roadside skips and resulted in personal injuries in the past three years:

	<i>2013</i>	<i>2014</i>	<i>2015</i>
Number of traffic accidents	4	2	4
Number of casualties	7	3	4

- (3) The HKPF takes enforcement action against roadside skips which cause serious obstruction and imminent danger to the public according to section 4A of the Summary Offences Ordinance (Cap. 228). Depending on the assessments of the situation at the locations under complaint, the scene police officers might, if the skip operators can be identified, issue advice and/or warnings to the concerned skip operators and request them to remove the skips immediately. The Police might also hire a contractor to remove skips when the skips cause serious obstruction or imminent danger to the public, or refer to the LandsD for follow-up for non-emergency cases. The skip operators would be prosecuted by way of summons if there is sufficient evidence for prosecution. If the roadside skips under complaint do not cause obstruction, inconvenience or danger to the public or traffic but illegally occupy Government land, the LandsD will conduct site inspections within two working days after receiving complaints or referrals from the Police. The LandsD will post notices according to section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) to require the concerned skip owners to remove the skips within one day after a notice is posted, or else the skips will be removed by the LandsD's contractor.
- (4) To address the issue of lack of proper storage area for skips, the JWG has proposed to make available to skip operators through tendering short-term tenancies (STT) sites for storage of skips. We have already identified two pieces of land for the purpose, and are working on the terms and conditions for leasing the STTs. We will shortly consult the relevant District Councils of the two identified sites. Depending on the outcome of the consultation, we plan to tender out the STTs in the second quarter of 2016 so that the trade would have suitable locations for placement of skips within 2016.



Besides, in order to enhance enforcement efficiency, we have prepared the terms and conditions for a service contract with a view to engage a service provider to support the enforcement departments in speedy removal of skips. This contract service will be commissioned in parallel with the provision of the STT sites for placement of skips so as to increase the deterrent against malpractices.

Annex

Number of roadside skip complaints received and skips removed  
by Lands Department (by District)

	2013		2014		2015	
	<i>Number of complaints</i>	<i>Number of skips removed</i>	<i>Number of complaints</i>	<i>Number of skips removed</i>	<i>Number of complaints</i>	<i>Number of skips removed</i>
Central and Western	70	0	132	1	141	0
Southern	16	0	35	0	21	0
Wan Chai	144	0	300	0	80	0
Eastern	74	0	215	0	212	0
Kwun Tong	47	1	61	2	81	1
Wong Tai Sin	8	0	12	0	4	0
Kowloon City	53	0	28	1	50	0
Sham Shui Po	26	0	40	2	28	1
Yau Tsim Mong	79	0	233	1	95	0
Islands	1	0	0	0	1	0
North	9	0	5	0	4	0
Sai Kung	23	7	40	6	64	5
Sha Tin	7	1	19	0	10	0
Tai Po	2	0	8	0	6	0
Tuen Mun	10	0	6	1	2	0
Tsuen Wan	35	0	11	0	18	0

	2013		2014		2015	
	<i>Number of complaints</i>	<i>Number of skips removed</i>	<i>Number of complaints</i>	<i>Number of skips removed</i>	<i>Number of complaints</i>	<i>Number of skips removed</i>
Kwai Tsing	13	0	15	0	37	1
Yuen Long	10	0	4	0	4	0
Total	627	9	1 164	14	858	8

Number of roadside skip complaints received and skips removed by the Police  
(by police districts)

	2013		2014		2015	
	<i>Number of complaints</i>	<i>Number of skips removed</i>	<i>Number of complaints</i>	<i>Number of skips removed</i>	<i>Number of complaints</i>	<i>Number of skips removed</i>
Central	87	0	98	0	102	0
Western	53	0	90	0	67	0
Wan Chai	86	0	95	0	136	1
Eastern	109	0	179	1	131	0
Kwun Tong	62	0	92	0	113	0
Wong Tai Sin	16	0	36	0	27	0
Kowloon City	74	0	120	1	106	0
Sham Shui Po	38	0	47	0	74	0
Yau Tsim	80	1	144	0	124	1
Mong Kok	27	0	71	0	75	1
Sau Mau Ping	15	0	37	1	54	0
Lantau	0	0	1	0	1	0
Sha Tin	30	0	32	0	37	1
Tai Po	18	0	36	1	34	0
Tuen Mun	13	0	22	0	23	0
Tsuen Wan	37	0	58	0	74	0
Kwai Tsing	20	0	25	0	34	0
Yuen Long	18	0	25	1	18	0
Total	783	1	1 208	5	1 230	4

## Provision of Clinical Psychological Services

10. **MRS REGINA IP** (in Chinese): *President, currently, there are five Clinical Psychology Units (CPUs) under the administration of the Clinical Psychological Service Branch of the Social Welfare Department (SWD), which provide various types of psychological services (including psychological and intellectual assessment, psychotherapy, etc.) to help individuals in mental, emotional or psychological distress to overcome their crises and problems. According to the information on the SWD web site, members of the public who wish to seek clinical psychological services may visit the Integrated Family Services Centres (IFSCs) under SWD in the districts where they live or call the Departmental Hotline for registration. After conducting initial screening and counselling for people seeking assistance, the social worker on duty may refer their cases to CPUs for follow-up or treatment if necessary. Besides, some non-profit-making organizations also provide paid psychological counselling services. In this connection, will the Government inform this Council:*

- (1) *of the number of requests for assistance received from people in distress by SWD in each year between 2011 and 2015 and, among such requests, the percentage of those requests which were referred to CPUs, as well as the average and median waiting time of new cases of CPUs;*
- (2) *of the specific criteria adopted, by the social workers on duty at IFSCs when they conduct the initial screening and counselling for people seeking assistance, for deciding whether the cases should be referred to CPUs for follow-up or treatment;*
- (3) *whether the reception duties at the IFSC registry and the call answering duties for the Departmental Hotline are all undertaken by registered social workers; if not, given that the psychological state of people in distress is more sensitive and fragile as well as less stable than that of ordinary people, and that they are apprehensive of being labelled as patients with mental illness, whether SWD will consider arranging registered social workers to undertake such duties to provide people seeking assistance with services which are more professional in nature; if SWD will not, of the reasons for that;*

- (4) *given that incidents of students committing suicide due to study pressures or other distress have occurred from time to time in recent years, whether SWD has deployed staff members to regularly visit various universities as well as secondary and primary schools to impart to students the importance of mental health awareness, and whether SWD has actively reached out to students showing signs of distress for early identification and handling of the cases; if SWD has, of the details; if not, the reasons for that;*
- (5) *given that quite a number of working persons face tremendous work pressure, whether SWD has regularly collaborated with public and private organizations to conduct briefings for working persons on the importance of mental health awareness, and whether SWD has actively reached out to working persons showing signs of distress for early identification and handling of the cases; if SWD has, of the details; if not, the reasons for that; and*
- (6) *as I have learnt that the psychological counselling services provided by some non-profit-making organizations are expensive (e.g. the services provided by experienced registered social workers and clinical psychologists are charged at \$600 to \$900 and \$1,500 per hour respectively), which are beyond the affordability of the general public, whether the Government will consider providing subsidy to non-profit-making organizations with a view to lowering the fees for such services; if it will not, of the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, in consultation with the Education Bureau and the Food and Health Bureau, my reply to the six parts of the question raised by Mrs Regina IP is as follows:

- (1) The number of treatment cases handled by the Clinical Psychological Service Branch of the Social Welfare Department (SWD) each year from 2011-2012 to 2015-2016 (up to 31 December 2015) is as follows:

2011-2012	2 093
2012-2013	2 082
2013-2014	2 004
2014-2015	2 061
2015-2016 (up to 31 December 2015)	1 944

The average waiting time of new cases of the SWD's Clinical Psychological Service Branch each year from 2012-2013 to 2015-2016 (up to 31 December 2015) is as follows:

2012-2013	59.1 days
2013-2014	64 days
2014-2015	56 days
2015-2016 (up to 31 December 2015)	46.3 days

The SWD does not keep statistics on the median waiting time of new cases of the Clinical Psychological Service Branch or the average waiting time of new cases before 2012-2013.

(2) and (3)

The 65 Integrated Family Service Centres and the two Integrated Services Centres operated by the SWD and non-governmental organizations (NGOs) over the territory provide preventive, supportive and remedial family services to individuals and families in need, including persons seeking clinical psychological service and their families. All the staff manning the reception counters of the Centres have received relevant training and coaching, and will arrange social workers to interview the persons in need of assistance. Social workers will conduct preliminary assessment of the persons concerned with difficulties in emotion, behaviour, family/social relationship, employment/study, financial condition, and so on, as well as their welfare needs, and provide appropriate services. For cases assessed to be in need of clinical psychological assessment or treatment, social workers will refer the persons concerned to the SWD's Clinical Psychological Units for follow-up. Enquiries received through the SWD's Hotline Service are answered by

registered social workers who will handle the enquiries professionally to gain a preliminary understanding of callers' needs, and refer them to appropriate service units for follow-up on a case-by-case basis.

- (4) The SWD has implemented the policy of "one school social worker for each secondary school" since the 2000-2001 school year through providing recurrent subvention to 34 NGOs with a view to enhancing support for students. School social workers have been collaborating closely with schools and disciplinary and guidance teachers to understand students' needs, as well as helping students with difficulties in academic, social or emotional development to solve problems, including enhancing their understanding of emotion and stress management through organizing a variety of activities and counselling services. School social workers will also, based on students' needs, make appropriate referrals for clinical psychological services.

According to the Education Bureau's information, elements of health-related learning and life education are featured and covered in various key learning areas/subjects. The Education Bureau also collaborates with other government departments and NGOs to provide counselling according to students' conditions and needs. School professionals (including guidance teachers/personnel, school social workers and educational psychologists) refer students to psychiatrists for diagnosis or medication, if necessary. In addition, schools arrange multi-disciplinary case conferences on a need basis for psychiatrists, medical social workers, educational psychologists and school personnel to jointly discuss appropriate support measures for students. As regards the post-secondary sector, the University Grants Committee-funded institutions have established dedicated units to promote mental health and provide professional counselling and related services to their students; and many self-financing post-secondary institutions also provide similar counselling services to their students.

Separately, the Department of Health has introduced the Student Health Service (SHS) since the 1995-1996 school year, arranging annual check-ups (which include examination related to

psychological health and behaviour, and so on,) for primary and secondary school students at student health service centres. Students in need are referred to the special assessment centre, specialist clinics (including psychiatric clinics), schools or other social welfare organizations for detailed assessment and follow-up. Under the SHS, an outreach service to schools has been implemented since the 2001-2002 school year to strengthen and consolidate the psychosocial health of secondary school students. Through professionals such as doctors, nurses, dieticians, social workers and clinical psychologists, the service provides secondary school students with basic life skills training and topical programmes covering emotional management, communication skills, personal relationships building, management of stress and adverse situations, self-image development, knowledge of ill health effects of alcohol and drug, awareness of adolescents' psychology and behaviour, goal setting, healthy lifestyles, and so on. These help adolescents develop positive thinking and attitude towards life and confidently and effectively face changes and challenges.

- (5) The SWD has been providing subvention to NGOs since October 2010 to operate 24 Integrated Community Centres for Mental Wellness (ICCMWs) across the territory to provide discharged mental patients, persons with suspected mental health problems, their families/carers and other residents living in the community with one-stop and district-based community support services ranging from prevention to risk management. In addition to day training, casework counselling, outreaching services, therapeutic and supportive groups, and so on, ICCMWs provide mental health education programmes in the community, or in social welfare organizations, schools or work places as needed, to enhance community understanding of mental health. Appropriate follow-up services are also provided to those who are in need of mental health service.

The Labour Department (LD) and the Occupational Safety and Health Council have issued a variety of promotional publications and information, and have organized various forms of publicity activities (such as sharing sessions and award presentation ceremonies, public

talks and workshops) to promote among employers and employees the proper understanding of work pressure and pressure management. Employees suspected to be suffering from mental or emotional problems arising from work pressure may seek consultations at the occupational health clinics of the LD. Apart from providing counselling on the prevention and management of work pressure, occupational health doctors and nurses can refer such employees to the Hospital Authority for follow-up if necessary.

The DH will launch a three-year territory-wide public education and publicity campaign on mental health in late January 2016. The objectives of the campaign are to step up public engagement in promoting mental well-being and increase public knowledge and understanding about mental health. The target audience includes adolescents, adults and the elderly, and there are working persons among them.

- (6) Apart from providing free clinical psychological service to the public through its Clinical Psychological Service Branch, the SWD provides subvention for NGOs' clinical psychological services and these services are provided free of charge. Besides, the Hospital Authority has all along been providing subvented clinical psychological service to the public.

### **Food Safety Concerning Eateries of Fast Food Chains**

11. **MR WONG YUK-MAN** (in Chinese): *President, the Centre for Food Safety (CFS) under the Food and Environmental Hygiene Department is responsible for food safety matters and takes food samples for testing according to a risk-based principle. Some members of the public have relayed to me that food safety incidents involving eateries of fast food chains have occurred one after another recently. For instance, the eateries of an American-style fast food chain sold meat containing antibiotics, while those of a Hong Kong-style fast food chain were repeatedly fined by the court for selling food containing insects, and did not keep chilled chicken under refrigeration at a temperature between*



0°C and 4°C during transportation as required. Those members of the public are worried that their health may be affected as they often patronize such eateries. In this connection, will the Government inform this Council:

- (1) whether CFS assessed, in the past three years, the risks of food safety incidents posed by the food sold by the eateries of fast food chains; if CFS did, of the assessment outcome, how such eateries compare to other eateries in this regard, and the justifications for arriving at the relevant assessment outcome; and
- (2) whether CFS will step up its efforts in conducting regular and surprise inspections on the hygiene conditions and food handling at the eateries of fast food chains; if CFS will, of the details; if not, the reasons for that?

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, the Food and Environmental Hygiene Department (FEHD) is the licensing authority of food premises. In accordance with the Public Health and Municipal Services Ordinance (Cap. 132) and the Food Business Regulation (Cap. 132X), the FEHD has, through the licensing regime, inspections and enforcement actions, strived to ensure that licensees of food premises comply with licensing requirements and conditions, and abide by the provisions relating to food safety and environmental hygiene under Cap. 132 and its subsidiary legislation. The Centre for Food Safety (CFS) of the FEHD, through the food surveillance programme, takes food samples at the import, wholesale and retail levels (including licensed food premises) for microbiological, chemical and radiological testing to ensure that the food sold in Hong Kong is safe and fit for consumption. My consolidated reply to the two parts of the question is as follows.

Under the "Risk-based Inspection System" (RBIS) adopted by the FEHD since 2003, licensed food premises are classified into three risk types whereas the inspection frequency is determined by the risk potential of individual food premises. Food premises classified as low, medium and high risk types (Types I, II and III) are inspected once every 20, 10 and four weeks respectively. Major considerations that are taken into account in the classification of licensed food premises include the type of food sold and the intended mode of

consumption by customers, the activity of the food business, the method of food processing in use, the size of the customer base and past records of the food premises. Based on the concept of "Hazard Analysis and Critical Control Point", this classification method aims at preventing food safety problems and ensuring that inspection resources are appropriately allocated. As such, the frequency at which individual licensed food premises are inspected is determined by the level of risk potential assigned to them. Based on the same set of considerations, the branches of large-scale catering chains across the territory are assessed and classified individually for determining their inspection frequency.

The FEHD reviews the risk potential of individual licensed food premises annually to determine the frequency of inspections in the following year. Licensed food premises found responsible for any food safety incident will be reclassified as Type III (high risk type) and more frequent inspections will be conducted by the FEHD to ensure environmental hygiene and food safety.

Under the RBIS, the FEHD officers will conduct inspections at individual branches of chain restaurants according to their risk types. During the inspections, the health inspectors of the FEHD will check the sanitary conditions of the food premises concerned and the food safety management measures taken in respect of food, equipment, personal hygiene of food handlers, cleanliness of the premises, pest control and waste disposal, with a view to ensuring that the licensed food premises comply with the licensing conditions and meet the hygiene and food safety standards required by law. Inspection officers will issue warnings or institute prosecutions as appropriate for any irregularities found.

In order to fortify control over licensed food premises, apart from routine inspections, the FEHD also conducts theme-based surprise inspections and takes enforcement actions when necessary. In the event of food safety incidents in licensed food premises, the FEHD will prosecute the non-compliant licensees and conduct more frequent inspections of the premises concerned. If the situation warrants, the restaurants will be ordered to suspend business and carry out thorough cleansing and disinfection. They will be allowed to resume business only when further inspection results are found to be satisfactory.

Furthermore, when formulating the food surveillance programme, the CFS adopts a risk-based principle in taking food samples from different licensed food premises for testing, and in determining the types of samples to be collected, the frequency and number of samples taken for testing, and the types of laboratory analysis to be conducted. The sampling programme is under regular review, taking into account factors such as past food surveillance results, local and overseas food incidents as well as relevant risk analysis. Where licensed food premises are involved in food safety incidents, the CFS will step up sampling of food at such food premises to ensure food safety.

### **Fresh Water Supplies to Public Markets and Cooked Food Centres**

12. **MR KWOK WAI-KEUNG** (in Chinese): *President, a certain number of public markets and cooked food centres (markets and centres) managed by the Food and Environmental Hygiene Department (FEHD) were built many years ago. Some stall operators in those premises have pointed out that the fresh water pipes in such markets and centres have aged seriously and corroded, resulting in impurities such as rust being found in the fresh water. Given that the stall operators need to use fresh water to wash the food ingredients for sale and cook food for patrons' consumption, the situation that the fresh water is of inferior quality will harm public health and undermine the business environment. In this connection, will the Government inform this Council:*

- (1) *of the materials used for the fresh water pipes in various markets and centres in the territory, the number of years for which they have been used, and the dates on which the maintenance works were last carried out;*
- (2) *whether FEHD regularly checks the conditions of the fresh water pipes in various markets and centres as well as carries out maintenance works; if FEHD does, of the details, if FEHD does not, the reasons for that;*
- (3) *whether FEHD has plans to replace the fresh water pipes in various markets and centres; if FEHD does, of the details; if FEHD does not, the reasons for that;*

- (4) *whether FEHD will, when co-ordinating works to replace the fresh water pipes, adopt an implementation method that will cause less disruption to the operation of the stalls, such as removing the old pipes only after installing new ones; if FEHD will, of the details; if FEHD will not, the reasons for that; and*
- (5) *whether FEHD regularly monitors the quality of fresh water in various markets and centres; if so, of the guideline value adopted; the results of the last three monitoring exercises; whether FEHD has formulated measures to ensure that the fresh water in various markets and centres is safe for consumption; if FEHD has, of the details; if FEHD has not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, according to the Waterworks Ordinance (Cap. 102), the Water Supplies Department (WSD) is responsible for maintaining the Government's water supply system to the connection point at the building's lot boundary. As to the internal plumbing system, the water pipes in communal parts from the lot boundary to individual flats of the building are maintained by the agent (usually the property management agent or the owners' committee), while those inside a flat are maintained by the user (usually the property owner).

Separately, where the facilities concerned are in government buildings, in general, the relevant departments will normally entrust the maintenance works for the internal plumbing systems to the Architectural Services Department (ArchSD). There are 101 public markets under the management of the Food and Environmental Hygiene Department (FEHD), including 76 markets (with cooked food centres in 39 of them) and 25 stand-alone cooked food markets. The ArchSD has been entrusted with maintaining the internal plumbing systems of the 101 markets. The major areas of work include cleansing water tanks<sup>(1)</sup>, conducting regular inspections, carrying out maintenance works, and upgrading the pipes where necessary.

(1) The ArchSD will clean the fresh water tanks once every three months in accordance with the technical guidelines of the WSD.

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

- (1) According to the ArchSD, galvanized steel pipes were usually used as water pipes for markets built in the early days, while ductile iron pipes and copper pipes have been in use in recent years. The galvanized steel pipes will be replaced depending on their conditions or where necessary. Annex 1 gives the name of each existing public market and the year of commissioning.
- (2) Upon receiving a report from the FEHD on pipe damage, the ArchSD will immediately check the internal plumbing system concerned and arrange for timely repairs to ensure the system's stability. Having regard to the age of the properties under its care, the ArchSD also conducts regular inspections covering areas including internal plumbing systems.
- (3) Should the FEHD staff come across any problem with the fresh water pipes in the course of patrolling public markets, they will immediately notify the ArchSD to arrange for maintenance work. In addition, the FEHD will provide support to plans suggested by the ArchSD for replacement of fresh water pipes in public markets. Such works will be completed in phases. The ArchSD will take reference from and comply with the prevailing applicable technical guidelines issued by the WSD.
- (4) Before works to replace fresh water pipes are carried out, the FEHD will request the ArchSD to programme the works arrangements in a manner sensitive to the physical environment of individual markets and their mode of operation. The FEHD will also seek the views of the affected tenants and the Market Management Consultative Committees on the details of the works, as so to minimize any adverse impact that such works may have on market tenants and patrons.
- (5) Through promoting voluntary subscription to the "Quality Water Supply Scheme for Buildings — Fresh Water", the WSD encourages owners and property management agents to properly maintain the

internal plumbing systems of their buildings. To gain certification under the scheme, subscribers will have to regularly inspect the internal plumbing system, cleanse the water tanks and take water samples from the system for testing to make sure that the water quality complies with the relevant standards. Thus far, the 37 FEHD markets, as listed in Annex 2, were awarded certificates by the WSD under the scheme between 2014 and 2015. In December 2015, the WSD introduced an enhanced version of the scheme, with four heavy metals (that is, lead, cadmium, chromium and nickel) added to the list of substances requiring testing and the scope of water sampling expanded.

## Annex 1

## List of FEHD Public Markets

	<i>Name of Market</i>	<i>Year of Commissioning</i>
	<i>Eastern</i>	
1	Yue Wan Market	1979
2	Chai Wan Market	2001
3	Kut Shing Street Cooked Food Market	1986
4	Java Road Market	1993
5	Causeway Bay Market	1995
6	Electric Road Market	1993
7	Sai Wan Ho Market	1984
8	Quarry Bay Market	1988
9	Shau Kei Wan Market	1973
10	North Point Market	1970
11	Aldrich Bay Market	2008
	<i>Wan Chai</i>	
12	Bowrington Road Market	1979
13	Tang Lung Chau Market	1963
14	Wong Nai Chung Market	1996
15	Lockhart Road Market	1987
16	Wan Chai Market	2008

	<i>Name of Market</i>	<i>Year of Commissioning</i>
	<i>Central and Western</i>	
17	Sheung Wan Market	1989
18	Sai Ying Pun Market	1999
19	Centre Street Market	1976
20	Smithfield Road Market	1996
21	Shek Tong Tsui Market	1991
22	Queen Street Cooked Food Market	2004
	<i>Southern</i>	
23	Aberdeen Market	1983
24	Nam Long Shan Road Cooked Food Market	1987
25	Tin Wan Market	1979
26	Yue Kwong Road Market	1981
27	Ap Lei Chau Market	1998
28	Stanley Waterfront Mart	2007
	<i>Islands</i>	
29	Tai O Market	1989
30	Peng Chau Market	1999
31	Mui Wo Market	1993
32	Cheung Chau Market	1991
33	Mui Wo Cooked Food Market	1985
34	Cheung Chau Cooked Food Market	1991
	<i>Kwun Tong</i>	
35	Ngau Tau Kok Market	1981
36	Shui Wo Street Market	1988
37	Yee On Street Market	1999
38	Tsun Yip Cooked Food Market	1985
39	Kwun Tong Ferry Concourse Cooked Food Market	1984
40	Sze Shan Street Cooked Food Market	1980
41	Tung Yuen Street Cooked Food Market	1983
42	Lei Yue Mun Market	2000
	<i>Kowloon City</i>	
43	To Kwa Wan Market	1984
44	Kowloon City Market	1988
45	Hung Hom Market	1996
46	On Ching Road Flower Market	1979

	<i>Name of Market</i>	<i>Year of Commissioning</i>
	<i>Wong Tai Sin</i>	
47	Ngau Chi Wan Market	1986
48	Choi Hung Road Market	1988
49	Tai Shing Street Market	1998
50	Sheung Fung Street Market	1989
	<i>Mong Kok</i>	
51	Fa Yuen Street Market	1988
52	Mong Kok Cooked Food Market	2005
53	Tai Kok Tsui Market	2005
	<i>Sham Shui Po</i>	
54	Po On Road Market	1988
55	Pei Ho Street Market	1995
56	Tung Chau Street Temporary Market	1992
57	Lai Wan Market	1992
58	Cheung Sha Wan Cooked Food Market	1982
	<i>Yau Tsim</i>	
59	Haiphong Road Temporary Market	1978
60	Kwun Chung Market	1991
61	Yau Ma Tei Market	1957
	<i>Kwai Tsing</i>	
62	Wing Fong Street Market	1982
63	Ka Ting Cooked Food Market	1983
64	Tai Yuen Street Cooked Food Market	1984
65	Wo Yi Hop Road Cooked Food Market	1984
66	North Kwai Chung Market	1984
67	Cheung Tat Road Cooked Food Market	1987
68	Kwai Shun Street Cooked Food Market	1990
69	Tsing Yi Market	1999
	<i>Tsuen Wan</i>	
70	Yeung Uk Road Market	1990
71	Heung Che Street Market	1972
72	Chai Wan Kok Cooked Food Market	1979
73	Tsuen Wan Market	1981
74	Sham Tseng Temporary Market	1984
75	Tsuen King Circuit Market	1990



	<i>Name of Market</i>	<i>Year of Commissioning</i>
	<i>Tuen Mun</i>	
76	Lam Tei Market	1969
77	Hung Cheung Cooked Food Market	1979
78	Kin Wing Cooked Food Market	1979
79	San Hui Market	1982
80	Yan Oi Market	1983
81	Tsing Yeung Cooked Food Market	1983
	<i>Yuen Long</i>	
82	Kam Tin Market	1964
83	Lau Fau Shan Market	1964
84	Kik Yeung Road Cooked Food Market	1981
85	Tai Kiu Market	1984
86	Tai Tong Road Cooked Food Market	1985
87	Kin Yip Street Cooked Food Market	1985
88	Hung Shiu Kiu Temporary Market	1987
89	Tung Yick Market	1991
	<i>North</i>	
90	Sha Tau Kok Market	1998
91	Shek Wu Hui Market	1994
92	Kwu Tung Market Shopping Centre	1985
93	Luen Wo Hui Market	2002
	<i>Tai Po</i>	
94	Tai Po Hui Market	2004
95	Plover Cove Road Market	1991
	<i>Sai Kung</i>	
96	Sai Kung Market	1985
97	Tui Min Hoi Market	1983
	<i>Sha Tin</i>	
98	Sha Tin Market	1980
99	Tai Wai Market	1985
100	Fo Tan Cooked Food Market (East)	1982
101	Fo Tan Cooked Food Market (West)	1982

The FEHD Markets Participating in  
the Quality Water Supply Scheme for Buildings — Fresh Water

	<i>Name of Market</i>
	<i>Eastern</i>
1	Yue Wan Market
2	Chai Wan Market
3	Kut Shing Street Cooked Food Market
4	Java Road Market
5	Causeway Bay Market
6	Electric Road Market
7	Sai Wan Ho Market
8	Quarry Bay Market
9	Shau Kei Wan Market
10	North Point Market
11	Aldrich Bay Market
	<i>Wan Chai</i>
12	Bowrington Road Market
13	Tang Lung Chau Market
14	Wong Nai Chung Market
15	Lockhart Road Market
	<i>Central and Western</i>
16	Queen Street Cooked Food Market
	<i>Southern</i>
17	Nam Long Shan Road Cooked Food Market
18	Tin Wan Market
	<i>Kwun Tong</i>
19	Lei Yue Mun Market
	<i>Kowloon City</i>
20	To Kwa Wan Market
21	Kowloon City Market
22	Hung Hom Market
	<i>Wong Tai Sin</i>
23	Choi Hung Road Market
24	Tai Shing Street Market

	<i>Name of Market</i>
	<i>Kwai Tsing</i>
25	Wing Fong Street Market
26	Tai Yuen Street Cooked Food Market
27	North Kwai Chung Market
28	Tsing Yi Market
	<i>Tsuen Wan</i>
29	Tsuen Wan Market
30	Sham Tseng Temporary Market
31	Tsuen King Circuit Market
	<i>North</i>
32	Sha Tau Kok Market
33	Shek Wu Hui Market
34	Kwu Tung Market Shopping Centre
35	Luen Wo Hui Market
	<i>Tai Po</i>
36	Tai Po Hui Market
37	Plover Cove Road Market

### **Road Hazard Warning Lanterns**

13. **MR FREDERICK FUNG** (in Chinese): *President, according to the Code of Practice for the Lighting, Signing and Guarding of Road Works published by the Highways Department, at night or at times of poor visibility, all road obstructions or works must be delineated with prescribed road hazard warning lanterns (warning lanterns), and such warning lanterns must show an intermittent or revolving light to allow road users to know the limits of the obstructions and works. However, a number of members of the public have recently complained to me about the prolonged malfunctioning of warning lanterns for some road works, which may easily cause traffic accidents. They have also pointed out that some road works contractors use solar warning lanterns which are environmentally friendly, but such warning lanterns often malfunction because they have not been installed with rechargeable batteries or are undercharged, resulting in such warning lanterns existing in name only. In this connection, will the Government inform this Council:*

- (1) *of the number of complaints about the operation of warning lanterns received by the authorities in each of the past three years;*
- (2) *of the current mechanism for regulating the operation of warning lanterns; whether the regulatory work is undertaken by the works consultants concerned and government departments conduct regulatory work only after they have received complaints; whether the authorities will review such regulatory mechanism and step up inspections of road works so as to ensure that warning lanterns operate according to the requirements;*
- (3) *whether the authorities have grasped the situation in which the aforesaid solar warning lanterns malfunction because they have not been installed with rechargeable batteries or are undercharged; whether the authorities are aware that some contractors use solar warning lanterns without installing rechargeable batteries due to their relatively high prices; and*
- (4) *whether the authorities have encouraged or required contractors to use environmentally friendly equipment for the lighting and signing of road works; if they have, of the details; if not, the reasons for that; of the procedures for vetting and approving applications for using such environmentally friendly equipment (including solar warning lanterns) by contractors; whether they will review the existing procedures for contractors to introduce environmentally friendly equipment so as to ensure that such equipment really serves the intended purposes; if they will not, of the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, according to regulation 20 of the Road Traffic (Traffic Control) Regulations (Cap. 374G), person responsible for the road works<sup>(1)</sup> shall erect and maintain lanterns, traffic signs and road markings in a prescribed manner. In this regard, for the provision of lighting, signing and guarding of road works, the Highways

(1) According to regulation 19 of the Road Traffic (Traffic Control) Regulations (Cap. 374G), "person responsible" (負責人) in relation to any road works, obstruction or excavation means the person under whose supervision or direction the road works are carried out or the obstruction or excavation is caused or made.

Department (the HyD) has formulated a "Code of Practice for the Lighting, Signing and Guarding of Road Works" (the Code) which prescribes the relevant requirements for lanterns, traffic signs and road markings. The Code was formulated by the HyD with reference to standards of other advanced countries (for example, USA, Europe, and so on) and based on local past experience.

According to the Code, person responsible for the road works should take into account considerations such as the type, character and speed limit of the road to place and erect appropriate lanterns, traffic signs and road markings (such as warning signs, road hazard warning lanterns and traffic cones of appropriate height) at a safe distance in front of the works area of the road works, in order to ensure that the relevant road users can see the signs of the relevant road works clearly in front of an appropriate distance, as well as to make sufficient warning to approaching vehicles, thereby achieving the anticipated lighting, signing and guarding effects.

Road hazard warning lantern, which is the concern of Mr Frederick FUNG's question, is a type of lanterns specified by the Code. Apart from fencing off the works area of the road works, road hazard warning lanterns should be properly provided at a safe distance in front of the works area so that road users can see the works area clearly.

My reply to the four parts of the question raised by Mr FUNG is as follows:

- (1) In 2013, 2014 and 2015, the HyD has received five, seven and four complaints about the operation of road hazard warning lanterns (including issues related to unlit lanterns and luminous intensity) respectively.
- (2) To ensure that road users can be aware of the scope of the works area during night-time or times of poor visibility, the Code prescribes detailed requirements on the specifications of road hazard warning lanterns, including light colour, flashing rate of flashing lanterns, as well as their position and operating time, and so on. Person responsible for the road works should ensure that the relevant requirements in the Code are met during the road works.

Moreover, the audit inspection team of the HyD will carry out random audit inspections on the lighting, signing and guarding measures (including lanterns, traffic signs and road markings) of excavation works on public roads. For example, they will carry out random audit inspections during night-time or times of poor visibility to check whether road hazard warning lanterns are placed accordingly for the relevant road works and whether they meet the relevant flashing and luminosity requirements. In case of non-compliance, the HyD will notify the person responsible for the relevant road works, require them to rectify the non-compliance as soon as possible, and hold them responsible for not complying with the relevant requirements according to the actual situation.

The HyD considers that the current audit inspection mechanism is working well, and will continue to pay close attention to the situation on road works safety. If the public note any irregularities of road hazard warning lanterns, they are welcome to call the Government's "1823" 24-hour one-stop service hotline or the HyD's 24-hour hotline 2926 4111; or inform the HyD by email, fax or post of the location and situation of the road hazard warning lanterns with problems, so as to facilitate speedy follow-up by the HyD.

(3) and (4)

Currently, the requirements on the specifications of road hazard warning lanterns in the Code are based on their lighting, signing and guarding performance, without mandatory requirements on their battery types (for example, whether they use solar power storage). Currently, there are various types of products of road hazard warning lanterns in the market for selection by person responsible for the road works, in order to meet the requirements in the Code and suit the actual needs of individual road works. If environmentally-friendly equipment is adopted, it would still need to comply with the requirements in the Code.

Irrespective of the types and the functioning of power device of road hazard warning lanterns, the HyD's audit inspection will check whether they meet the relevant flashing and luminosity requirements.

In case of non-compliance, the HyD will notify the person responsible for the relevant road works, require them to carry out rectification as soon as possible, and hold them responsible for not complying with the relevant requirements according to the actual situation.

The HyD is of the view that the current requirements on road hazard warning lanterns in the Code can achieve the intended lighting, signing and guarding effects, and are effective and working well. The HyD will continue to pay close attention to the situation on road works safety, and review the Code when appropriate.

### **Colorectal Cancer Screening Pilot Programme**

14. **MR PAUL TSE** (in Chinese): *President, the Government has planned to launch the Colorectal Cancer Screening Pilot Programme (the Pilot Programme) in the middle of this year to subsidize members of the public of specific age groups for receiving colorectal cancer screening. However, the Government has not announced the details of the Pilot Programme. In this connection, will the Government inform this Council:*

- (1) *why it has not announced the details of the Pilot Programme;*
- (2) *whether the original estimated expenditure of \$420 million for the Pilot Programme needs to be revised; if so, of the details; whether there is any change in the target population and estimated number of beneficiaries under the Pilot Programme; if so, of the details;*
- (3) *given that colonoscopy services will be provided by private healthcare institutions under the Pilot Programme, of the average amount of fee per attendance for such services, and the amount of subsidy to be funded by public money in such a fee, as estimated by the authorities; and*
- (4) *given that the fees for colonoscopy services currently provided by private healthcare institutions vary greatly (for instance, individual clinics may charge a fee of as low as about \$5,000, which is far*

*lower than those charged by private hospitals), whether the authorities will, when implementing the Pilot Programme in future, require various private healthcare institutions participating in the Pilot Programme to publicize details and fee levels of their services, so as to enhance transparency and boost competition, thereby enabling members of the public to make informed choices; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, in view of a growing and ageing population, the Government anticipates that the number of new colorectal cancer cases and related healthcare burden will continue to increase. To handle the rapidly increasing healthcare burden arising from colorectal cancer, the Government decided to allocate around \$420 million in the five years starting from 2014-2015 for the study and implementation of a pilot programme to provide subsidized colorectal cancer screening for specific age groups.

- (1) To allow the early implementation of the Colorectal Cancer Screening Pilot Programme (the Pilot Programme), the Department of Health (DH) embarked upon the relevant study and planning work in January 2014. A multi-disciplinary taskforce, which comprises representatives from various medical associations and professional bodies, academic institutions and non-governmental organizations, was established to carry out the planning, implementation, publicity and evaluation work of the Pilot Programme, including determining the criteria for participation, method of screening, funding model and operational logistics, and so on. We also submitted an information paper in December 2014 to brief the Legislative Council Panel on Health Services the progress of the Pilot Programme. As mentioned in the Policy Agenda of the 2016 Policy Address, the Pilot Programme is expected to be launched in mid-2016 the earliest.
- (2) The Pilot Programme aims at assessing the implementation of population-based screening and its implications on the healthcare system. As such, the target users must be sufficiently representative and the current service capability should not be overloaded. After due consideration, the taskforce has agreed to



invite eligible Hong Kong residents aged 61 to 70 to undergo faecal immunochemical test (FIT) screening by batches over three years. Arrangements will be made for FIT positive participants to undergo colonoscopy.

With reference to the relevant demographic data, the Government estimates that around 30% of the eligible persons from the age group of 61 to 70 will participate in the Pilot Programme, and around 90% of those who are FIT positive (assuming that about 4.5% of the participants are FIT positive) will be willing to undergo colonoscopy. According to the above projection and the latest population statistics, the DH estimates that the Pilot Programme will attract around 300 000 participations in FIT screening and around 10 000 colonoscopies for FIT positive cases. This is similar to the projection made in the information paper submitted to the Legislative Council Panel on Health Services in December 2014. Hence, there is no need to revise the original estimated expenditure of \$420 million for the Pilot Programme.

- (3) To encourage the public to actively participate in the Pilot Programme and complete the screening process, the Government will provide subsidized FIT screening for participants. It will also subsidize those who are found to be FIT positive to undergo colonoscopy. In this connection, the Pilot Programme will adopt the public-private partnership model. Participants will first receive subsidized FIT service provided by participating private primary care doctors. For participants whose stool samples are found to contain occult blood, they will be referred by their primary care doctors for subsidized colonoscopy conducted by private specialists who have participated in the Pilot Programme. Private colonoscopists participating in the Pilot Programme must fulfil the specified requirements in terms of qualification, premises and facilities, as well as service quality and standard. In the planning process, the DH has maintained close communication with various stakeholders in the medical sector in order to enlist the support and active participation of private doctors and private healthcare facilities.

When determining the amount and details of subsidy of the Pilot Programme, the Government will take into consideration factors including market practice, experience of existing healthcare subsidy schemes, fairness and equity of charges as well as affordability and accessibility of service. The Government will announce relevant information in due course.

- (4) To facilitate public understanding of the details of the Pilot Programme and enhance market transparency, the DH will, on its website which disseminates information about colorectal cancer prevention, provide detailed information on the scope of the subsidized colonoscopy service, whether there is a charge payable to each participating specialist after deduction of the government subsidy and the respective amount. Participating clinics or private healthcare facilities must display posters in their premises, showing the charges for easy reference of the participants of the Pilot Programme.

### **Issuance of Hong Kong Identity Cards to Children of Hong Kong Permanent Residents Born Overseas**

15. **DR KENNETH CHAN** (in Chinese): *President, article 24(2)(3) of the Basic Law stipulates that HKPRs include persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2) in Article 24(2). Recently, a Hong Kong permanent resident (HKPR) residing in a member state of the European Union (EU) sought my assistance, claiming that when she brought her first child born in that EU country back to Hong Kong in 2013, the Immigration Department (ImmD) approved her application for the issuance of a Hong Kong Identity Card (HKIC) to that child but, when she brought her second child born in that EU country back to Hong Kong last year, ImmD refused to issue an HKIC to that child. ImmD indicated that the assistance seeker had settled abroad and, by virtue of Article 5 of the Nationality Law of the People's Republic of China (the Nationality Law), her children should not have Chinese nationality. The assistance seeker has indicated that as she has not yet acquired citizenship or permanent resident status of the country where she is residing at present, she cannot understand the justifications for ImmD's making the decision. Regarding the issuance of HKICs to children of HKPRs born overseas, will the Government inform this Council:*

- (1) *of the existing channels through which HKPRs may apply for HKICs for their children born overseas, and the details of the relevant application procedures;*
- (2) *of the number of applications for HKICs received by ImmD in each of the past three years which were made by HKPRs for their children born overseas and, among such applications, the number of those rejected because the applicants should not have Chinese nationality by virtue of Article 5 of the Nationality Law;*
- (3) *whether the authorities have formulated guidelines on the interpretation and enforcement of Article 5 of the Nationality Law in Hong Kong; if they have, whether they will make public the guidelines; if they will not, of the reasons for that; if they have not formulated such guidelines, whether the authorities will consider formulating and making public the relevant guidelines shortly; if they will, of the details; if not, the reasons for that;*
- (4) *given that the immigration policies adopted by foreign countries may change from time to time, whether the authorities will, in the light of such changes, regularly review and amend the policy on the enforcement of Article 5 of the Nationality Law in Hong Kong; if they will, of the details; if not, the reasons for that; and*
- (5) *whether the authorities will step up efforts in publicizing in Hong Kong and overseas the policy on the enforcement of Article 5 of the Nationality Law in Hong Kong to enable HKPRs to understand the procedures for applying for the issuance of HKICs to their children born overseas, as well as the criteria for vetting and approving such applications; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR SECURITY** (in Chinese): President, according to Article 24 of the Basic Law, permanent residents of the Hong Kong Special Administrative Region (HKSAR) shall have the right of abode in the HKSAR and shall be qualified to obtain, in accordance with the laws of the HKSAR, permanent identity cards (PICs) which state their right of abode. Paragraph 2 of Schedule 1 to the Immigration Ordinance (Cap. 115) stipulates that a permanent resident of the HKSAR is:

- (a) A Chinese citizen born in Hong Kong before or after the establishment of the HKSAR.
- (b) A Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR.
- (c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the HKSAR to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b).
- (d) A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and has taken Hong Kong as his place of permanent residence before or after the establishment of the HKSAR.
- (e) A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the HKSAR in category (d) before or after the establishment of the HKSAR if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong.
- (f) A person other than those residents in categories (a) to (e), who, before the establishment of the HKSAR, had the right of abode in Hong Kong only.

Schedule 1 to the Immigration Ordinance stipulates that a "Chinese citizen" is a person of Chinese nationality under the Nationality Law of the People's Republic of China, as implemented in the HKSAR pursuant to Article 18 of and Annex III to the Basic Law and interpreted in accordance with the Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the HKSAR (the Explanations) adopted at the 19th meeting of the Standing Committee of the National People's Congress at the 8th National People's Congress on 15 May 1996.

According to Article 5 of the Nationality Law of the People's Republic of China, any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality; but a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality. In considering whether the parents of the applicants have settled abroad, we will take the actual circumstances of individual case into account and make reference to the relevant court judgments and legal advice. In general, persons who reside ordinarily in a foreign country and are not subject to any condition of stay therein will be treated as having settled abroad.

Our reply to each part of the question raised is as follows:

- (1) Any persons, including the children born overseas to Hong Kong permanent residents (HKPRs), may submit an application for Verification of Eligibility for Permanent Identity Card (VEPIC) to the Immigration Department (ImmD) with copies of the supporting documents by post, drop-in boxes or via the Internet, if they have documents to prove that they belong to any categories of permanent resident in the HKSAR specified in Schedule 1 to the Immigration Ordinance. When submitting such application, the applicant must be staying in Hong Kong legally. Once the applicants' eligibility for PICs have been verified, the applicants can apply for Hong Kong PICs (HKPICs) in accordance with the Registration of Persons Ordinance (Cap. 177).

For persons residing outside Hong Kong who claim to be permanent residents of the HKSAR under paragraph 2(c) of Schedule 1 to the Immigration Ordinance, they can also apply for the Certificate of Entitlement (COE) of the HKSAR. HKPRs can apply for COEs for their eligible children born overseas. They can apply through the Chinese diplomatic and consular missions (CDCMs) in the country or territory where they reside, or by post to the ImmD directly. If the applications are approved, the children can apply for HKPICs in accordance with the Registration of Persons Ordinance, upon their arrival in Hong Kong on strength of their COEs.

Related application forms and information are available on the ImmD's website: <<http://www.immd.gov.hk/eng/services/right-of-abode-in-hksar.html>>.

- (2) The ImmD does not maintain statistics of HKPIC registrations made by children born overseas to HKPRs and the reasons for refusal of registrations.

- (3) and (4)

In processing VEPIC applications, the ImmD must, in accordance with the relevant laws, consider the individual circumstances of each application and whether the applicant is a Chinese citizen, in order to verify his eligibility for a PIC. As mentioned above, according to Schedule 1 to the Immigration Ordinance, "Chinese citizen" refers to a person of Chinese nationality under the Nationality Law of the People's Republic of China as interpreted in accordance with the Explanations. According to Article 5 of the Nationality Law of the People's Republic of China, any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality; but a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality. In considering whether the parents of the applicants have settled abroad, we will take the actual circumstances of individual case into account and make reference to the relevant court judgments and legal advice. In general, persons who reside ordinarily in a foreign country and are not subject to any condition of stay therein will be treated as having settled abroad.

- (5) Regarding matters on the right of abode, the ImmD has published a pamphlet on the "Right of Abode in the Hong Kong Special Administrative Region" for distribution to the public and uploaded information related to the Nationality Law of the People's Republic of China to its website as well as that of GovHK. Among other things, information related to the term of "having settled abroad" as specified in Article 5 of the Nationality Law of the People's Republic of China has also been uploaded to the ImmD's website for reference

by the public. In addition, the ImmD has, at times, sent officers on overseas visits to explain the various immigration arrangements, including the application and approval criteria for VEPIC by HKPRs migrated abroad and their children born overseas, through seminars arranged by the CDCMs and the Economic and Trade Offices of the HKSAR Government, as well as through the media.

### **Maintenance and Repairs of Fresh Water Pipes on Private Lands**

16. **MR LEUNG CHE-CHEUNG** (in Chinese): *President, at present, owners of private lands are responsible for the maintenance and repair of the fresh water pipes within the boundaries of their lands. Nevertheless, due to the fragmentation of ownerships of quite a number of private lands in rural areas, the authorities often find it difficult to expeditiously identify the parties to which the maintenance responsibility fall when fresh water pipes on private lands in those areas have burst, resulting in large quantity of fresh water running off the burst pipes. In this connection, will the Government inform this Council:*

- (1) *of the number of reports of incidents of fresh water pipe leakage or burst received by the Water Supplies Department (WSD) in the past three years and, among them, the number of those involving fresh water pipes on private lands, together with a breakdown by District Council district;*
- (2) *whether, under the current requirements, developers or builders applying for water supply to the private properties constructed by them are required to install valves at the connection point where the water supply system enters the private land concerned, so as to enable WSD to disconnect water supply to the properties concerned when necessary;*
- (3) *whether WSD has produced publicity materials to educate water users in rural areas on ways of handling incidents of bursting of fresh water pipes on private lands, including the need to know in advance the locations of the valves to enable rapid disconnection of water supply; if WSD has, of the details; if not, the reasons for that;*

- (4) *whether WSD has formulated internal guidelines to require the WSD staff concerned to issue a Repair Notice to the relevant user(s) within a certain time period from the confirmation of the occurrence of an incident of bursting of fresh water pipe on private land; if WSD has, of the details; and whether the notices will specify a deadline for the users concerned to complete the repair works; if so, of the details;*
- (5) *of the criteria based on which WSD decides whether or not to disconnect water supply to avoid fresh water running off the burst water pipes; in the past three years, of the number of times for which WSD disconnected water supply because of incidents of bursting of fresh water pipe on private lands, as well as the average duration of water disconnection each time; and*
- (6) *whether it has considered amending the Waterworks Ordinance (Cap. 102) to introduce a mechanism which enables repair works to be carried out first and the costs to be recovered from the users concerned afterwards, so as to enable WSD to immediately arrange repair works for fresh water pipes on private lands in case of emergency, thereby reducing the quantity of fresh water running off the burst water pipes; if it has, of the details; if not, the reasons for that?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, sections 7(1)(c)(ii) and 7(2)(c)(ii) of the Waterworks Ordinance (the Ordinance) provide that a consumer or agent is responsible for the custody and maintenance of an inside service or communal service. In case of a fresh water pipe leakage or burst on private land, the Water Supplies Department (WSD) will ascertain the location of the leaking or burst pipe before issuing a notice in accordance with the established procedures, requiring the consumer or agent concerned to carry out repair works within a specified time.

My reply to Mr LEUNG Che-cheung's question is as follows:



- (1) The WSD has handled a total of 27 075 complaints about fresh water pipe leakage or burst over the past three years. Among them, 2 891 cases involved private fresh water pipes and 24 184 cases were related to public fresh water pipes.

A breakdown of these leakage and burst reports of private fresh water pipes by the geographical constituency of district councils is not available as the WSD has not maintained such statistics. The following table shows a breakdown of the leakage and burst reports by the four operation regions of the WSD (that is, Hong Kong, Kowloon, New Territories East and New Territories West):

<i>Year</i>	<i>Region</i>	<i>Involving public fresh water pipes (Number of cases)</i>	<i>Involving private fresh water pipes (Number of cases)</i>
2013	Hong Kong	3 296	252
	Kowloon	1 387	216
	New Territories East	2 146	253
	New Territories West	2 024	209
	Sub-total	8 853	930
2014	Hong Kong	2 806	246
	Kowloon	1 360	181
	New Territories East	1 831	279
	New Territories West	1 881	333
	Sub-total	7 878	1 039
2015	Hong Kong	2 444	130
	Kowloon	1 305	148
	New Territories East	1 794	332
	New Territories West	1 910	312
	Sub-total	7 453	922
Total		24 184	2 891
		27 075	

- (2) To control water supply, the WSD installs valves at the government land lots near the connection points where public water supply systems enter private land. Under the WSD's current requirements, developers or builders applying for water supply to the private

properties should generally install valves near the boundaries of the consumers' lots to facilitate consumers turning off the valves for repair works or inspection when necessary.

- (3) Through pamphlets, leaflets, posters and website, the WSD has publicized the consumers' responsibilities and their scope of work in respect of maintenance and repair works for inside services and communal services; disseminated information on ways to handle common problems of water supply systems; and advised the public to conduct regular inspection and undertake maintenance work for private fresh water pipes. By undertaking regular inspection and maintenance work for private fresh water pipes, the consumers or agents should know the location of these valves and, when necessary, can shut them down to disconnect water supply and to arrange repair works. Should there be any problem with their water pipes, the consumers or agents may hire a licensed plumber to conduct detailed inspection and rectify the leaks or other defects. Where necessary, the consumers or agents may call the WSD Enquiry Hotline for help.
- (4) The WSD's internal instructions stipulate that, after confirmation of a leakage in a fresh water pipe on a private lot, a Repair Notice<sup>(1)</sup> should be issued within two working days to the consumers or agents responsible for its maintenance to require them to repair the leakage. The WSD would give due consideration for the severity of the incident and the time needed for arranging and undertaking the works when specifying a reasonable time limit for the repair works.

According to the WSD's internal instructions, the consumer or agent will be given 14 days to complete the repair works in case of a minor leakage that does not cause inconvenience or pose any hazard to the surrounding environment and the general public. In case of a serious leakage that affects the surrounding environment or the general public, the WSD will require the consumer or agent concerned to complete the repair works within three to seven days.

(1) Section 16 of the Ordinance provides that if the Water Authority is satisfied that an inside service is in such a condition that waste or pollution of a supply has occurred, he may by notice require the consumer or agent to carry out the repairs or other works specified in the notice to the inside service or communal service.

- (5) For pipe leakages, the WSD would issue a Disconnection Notice to the consumer or agent concerned if and when they have not completed the repair works to the leaking pipes within the time limit as required in the Repair Notice. The water supply would only be disconnected seven days after the issuance of the Disconnection Notice. In case of urgency, such as a burst pipe in the inside service, the Water Authority may suspend water supply at a time he considers fit and appropriate.

Over the past three years, the number and the average duration of disconnection or suspension of a supply by the WSD owing to leaking or burst water pipes on private lands are shown below:

<i>Year</i>	<i>Number of cases</i>			<i>Average duration of disconnection or suspension of water supply (days)</i>
	<i>Disconnection of water supply due to failure in completing repair works to leaking pipes within specified time limit</i>	<i>Suspension of water supply in urgent cases</i>	<i>Sub-total</i>	
2013	41	110	151	3
2014	53	126	179	3
2015	67	122	189	3
Total	161	358	519	-

- (6) In case of an urgency, the Water Authority may enter any premises at any time to repair the inside service or communal service within the premises according to the current Ordinance.

Under other general circumstances, the responsibility for repairing defective private water pipes lies with the consumers or agents. As such, we consider it more appropriate for the consumers or agents to carry out repair works to the defective private water pipes themselves. However, the WSD may consider, on a discretionary basis, repairing private water pipes on behalf of the consumers and

agents under certain circumstances. For instance, when the consumers or agents have serious difficulty in arranging the repair works, request the WSD to undertake the repair works and have signed an undertaking for bearing the repair costs, the WSD may undertake the repair works having regard to the case-specific circumstances. Another instance is when the consumer or agent concerned has not undertaken the specified works within the time limit as required in the Repair Notice issued by the WSD. Having completed the repair works, the WSD would issue a demand note to the consumer or agent concerned to recover the cost in accordance with section 17(3) and 17(4) of the Ordinance.

### **Promoting Wider Use of Electric Buses**

17. **MR KENNETH LEUNG** (in Chinese): *President, in 2010, the Government announced that its policy objective was to have ultimately only zero-emission buses running in the territory. Subsequently, it provided a funding of \$180 million to fully subsidize five franchised bus companies to purchase eight super-capacitor buses and 28 battery-electric buses (i.e. 36 buses in total) as well as related charging facilities for trial runs in a two-year period (the trial scheme). In this connection, will the Government inform this Council:*

- (1) *given that the first batch of five battery-electric buses, after undergoing trial runs at the end of last month, were once returned to the manufacturer for repair due to a safety problem of the gates of those buses, of the details of that problem as well as the functionality and performance of those buses; whether the authorities have followed up on the issue by checking if there are similar problems in other electric buses to be put on trial runs;*
- (2) *whether it has plans to gradually replace the existing diesel buses with electric buses after the conclusion of the trial scheme, and whether it has any implementation timetable for the policy objective of having ultimately only zero-emission buses running in the territory; if it does, of the details; if not, the reasons for that;*

- (3) *how the 36 electric buses, which will be of the two aforesaid types, will be allocated among the various franchised bus companies, and of the respective manufacturers of such buses; whether it has considered introducing electric buses manufactured overseas for trial runs so as to compare the functionality and safety of the electric buses manufactured in different countries;*
- (4) *whether it has, gearing to the unique climate conditions and rough terrain in Hong Kong, set functionality and performance standards for public electric buses for compliance by manufacturers when they manufacture electric buses for use in Hong Kong, so that the franchised bus companies, on receiving electric buses, do not need to make extensive modifications to the buses for adapting them to Hong Kong's environment; if it has, of the details; if not, the reasons for that;*
- (5) *given that the Hong Kong Productivity Council has spent \$38 million to participate in the development of the first "Brand Hong Kong" single-deck electric bus, which was designed in Hong Kong and manufactured on the Mainland and, following road tests conducted in Hong Kong in October last year, the bus was suddenly burnt down last month in a car park, whether the authorities know the cause of that incident and whether they have investigated if the design of that electric bus has any serious safety problems; and*
- (6) *whether it knows the respective charging facilities currently available in Hong Kong which can cater for the operations of the two aforesaid types of electric buses, as well as their functionality and performance; whether it has any plan to provide more of such charging facilities; if it does, of the details (including such facilities' locations, technology for charging batteries, etc.); if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President, the Government's ultimate policy objective is to have zero emission buses running across the territory. In this regard, the Government funded \$180 million to fully subsidize the franchised bus companies to purchase 36 single-deck electric buses,

including eight supercapacitor buses and 28 battery-electric buses and related charging facilities, for trial runs to assess their operational performance under local conditions. Although single-deck buses account for less than 10% of local franchises buses, we start our trial with them first, as electric buses now available on the market are mainly single-deckers. The trial can help encourage bus suppliers to speed up developing double-deck electric buses suitable for use in Hong Kong. We will also encourage the franchised bus companies to try out double-deck electric buses when suitable ones are available on the market.

Since 27 December 2015, the first batch of five battery-electric buses purchased by the New World First Bus Services Limited (NWFB) and Citybus Limited (CTB) with Government's subsidy have commenced services on five routes in Hong Kong Island. The franchised bus companies are also in the process of completing the procurement procedure and preparing for installation of charging facilities for other electric buses. The trials will commence progressively in 2016.

With regard to the questions raised by Mr Kenneth LEUNG, our reply is as follows:

- (1) During the regular inspections by the NWFB and the CTB on the five battery-electric buses in early January this year, it was found that the bus door would open if the edge of the door seal was strongly pressed from the inside. This only happened when the bus was stationary but not in motion. On safety consideration, the NWFB and the CTB stopped the service of these buses on 8 January 2016. Upon inspection by the bus manufacturer, it was found that there was a problem in the control software and that was fixed immediately by software upgrade. After the bus companies had confirmed that the problem was fixed, the concerned buses resumed services on 11 January 2016.

To monitor and assess the performance of the electric buses, the Environmental Protection Department (EPD) has set up a task force, comprising representatives from the franchised bus companies, the EPD, the Transport Department (TD), as well as local experts. The EPD will report the interim findings of the trial to the Panel on Environmental Affairs of the Legislative Council early next year.

- (2) The trial of electric buses will last for two years. The scope of the trial includes reliability of buses, batteries/supercapacitors and charging facilities, as well as maintenance requirements and economic feasibility, and so on, in order to assess whether these electric buses are suitable for use as franchised buses in Hong Kong. If the trial results are satisfactory, the Government will encourage the franchised bus companies to use electric buses on a larger scale, taking into account affordability of the bus companies and passengers.
- (3) The EPD has consulted the five franchised bus companies and taken into account their fleet sizes, service areas and technology preference when allocating the 36 electric buses. When purchasing the electric buses, the franchised bus companies have also taken into account their operational needs in working out the technical specifications. Open tender was adopted with no restriction on the origin of manufacture. Depending on the tender results, the franchised bus companies will purchase electric buses from more than one supplier for the trial as far as practicable.

The number of electric buses purchased by the franchised bus companies under the trial and their respective manufacturers are as follows:

<i>Franchised Bus Companies</i>	<i>Number of single-deck electric buses</i>	<i>Bus Manufacturers</i>
The Kowloon Motor Bus Company (1933) Limited (KMB)	8 supercapacitor buses	China Youngman Automobile Group Company Limited
	10 battery-electric buses	Contract will be awarded soon
Long Win Bus Company Limited (LWB)	4 battery-electric buses	Contract will be awarded soon
CTB	3 battery-electric buses	BYD Auto Industry Company Limited
	3 battery-electric buses	Great Dragon International Corporation Limited

<i>Franchised Bus Companies</i>	<i>Number of single-deck electric buses</i>	<i>Bus Manufacturers</i>
NWFB	2 battery-electric buses	BYD Auto Industry Company Limited
	2 battery-electric buses	Great Dragon International Corporation Limited
New Lantao Bus Company (1973) Limited (NLB)	2 battery-electric buses	BYD Auto Industry Company Limited
	2 battery-electric buses	Great Dragon International Corporation Limited

- (4) The franchised bus companies are responsible for the procurement of electric buses for trial. They have taken into account their operational needs and Hong Kong's local conditions in working out the technical specifications of electric buses.

Every new model of electric vehicle (including public bus) has to undergo a type approval process and pre-registration examination by the TD to ensure that it meets the requirements of the Road Traffic Ordinance (Cap. 374) and its subsidiary regulations before the vehicle can run on the road. Having made reference to the relevant international standards and consulted local electric vehicle experts, the TD has established a set of "Vehicle Construction Approval Requirements for Electric Vehicles", which include specification requirements on functional safety and protection against electric shock, battery safety and charging system. The requirements have been uploaded onto the TD's homepage in 2010 and will be updated having regard to the latest development of electric vehicles.

- (5) In 2013, the Innovation and Technology Fund of the Innovation and Technology Commission (ITC) supported the Hong Kong Productivity Council (HKPC) to carry out a collaborative project with an industry sponsor for the research and development (R&D) of electric buses. The approved project cost was \$38 million, of which more than half was provided by the participating company. The project deliverables included the design and production of two prototype electric buses for the purpose of carrying out R&D,



functionality checks and performance tests. Since early 2015, the prototype electric buses have undergone over 15 000 km of road tests lasting eight months in the Mainland and Hong Kong. The project team also engaged an independent certification body to take part in the tests. The road tests of the buses were completed by the end of November last year and their performance in all the tests were satisfactory.

The ITC is very concerned about the fire relating to one of the prototype buses on 13 December 2015. To investigate the cause of the incident, the HKPC has set up a joint technical investigation team with the participating company. The team has also invited leading experts and academics in the field of electric vehicle technology to offer independent advice. Upon completion of the investigation, the HKPC will submit a report to the ITC as soon as possible. As the investigation is still ongoing, it is premature to make any conjecture or draw any conclusion at this stage.

Besides, the TD has not received any application for type approval of the concerned electric bus and hence the concerned electric bus has not been registered in Hong Kong.

- (6) At present, there is still no harmonized international design standard on the charging facilities of electric buses. Electric bus manufacturers have to design suitable charging facilities for their own electric buses. To facilitate the trial and provide smooth and reliable bus services, the franchised bus companies will install charging facilities in certain depots or bus stops, taking into account individual operational needs. Details of the charging facilities of franchised bus companies are as follows:

<i>Franchised Bus Companies</i>	<i>Locations of Charging Facilities</i>	<i>Progress</i>
KMB — Supercapacitor buses	Quick chargers:  Sha Tin Central Bus Terminus Bus Stop at Shing Kai Road, Kai Tak	Under construction  Under preparation

<i>Franchised Bus Companies</i>	<i>Locations of Charging Facilities</i>	<i>Progress</i>
KMB — Battery-electric buses	Quick chargers:  Lai Chi Kok Bus Maintenance Depot Yuet Lun Street Depot Kowloon Bay Bus Maintenance Depot	Under preparation  Under preparation Under preparation
LWB — Battery-electric buses	Quick chargers:  Siu Ho Wan Bus Maintenance Depot	Under preparation
CTB — Battery-electric buses	Quick chargers:  Chai Wan Depot	In operation
NWFB — Battery-electric buses	Quick chargers:  Chai Wan Depot Wong Chuk Hang Depot	In operation In operation
NLB — Battery-electric buses	Quick chargers:  Tung Chung Yat Tung Estate Public Transport Terminus Yuen Long Station (North) Public Transport Interchange	Under preparation  Under preparation

During the two-year trial, we will assess the performance of electric buses and also evaluate the performance of the charging facilities. This is for assessing the ancillary support, including charging facilities, required when further promoting the use of electric buses.

**Prices of Auto-fuels and Domestic LPG**

18. **MR CHAN HAK-KAN** (in Chinese): *President, it has been reported that while the prices of international crude oil and liquefied petroleum gas (LPG) have plunged by about 50% since last year, the local retail prices of auto-fuels and domestic LPG have dropped only by some 30% during the same period, reflecting the problem that retail prices "rise substantially but hardly fall". On the other hand, to improve the transparency of prices of auto-fuel products, the Environment Bureau posts onto its web site movements in local import and retail prices of auto-fuels on a weekly basis. In this connection, will the Government inform this Council:*

- (1) *given that in April last year in reply to a question raised by a Member of this Council, the Government indicated that it was discussing with the oil companies about posting information on prices of domestic piped LPG on the Government's web site, of the latest progress of such discussion and the details of the related arrangement; whether it has considered extending such an arrangement to other fossil fuel products, such as cylinder LPG;*
- (2) *as the Government has indicated that "the present price adjustment mechanism of the oil companies is able to reflect movements of international LPG prices", whether it has studied the causes for the long-standing situation that the local retail prices of LPG "rise substantially but hardly fall";*
- (3) *as some comments have pointed out that the retail prices of fuel products set by various oil companies have been more or less the same for a long time, arousing suspicion of "collusive price-fixing", whether it knows if the Competition Commission has launched any related investigation on its own initiative or in response to complaints; and*
- (4) *whether it has any plan to publish, on a regular basis, information on suggested prices for auto-fuels and domestic LPG to let consumers know the reasonable prices?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President, the consolidated replies of the Environment Bureau and Commerce and Economic Development Bureau to the above four questions are as follows:

- (1) Subsequent to our reply to a question raised by a Member of the Legislative Council in April last year, we have contacted the three domestic piped liquefied petroleum gas (LPG) suppliers requesting them to enhance transparency of domestic LPG prices and publish the prices of their LPG products timely in response to the Legislative Council Member's request. Two of them have published the updated domestic piped LPG price on their websites since July 2015. The other one responded that they are unable to publish price information of their domestic piped LPG products due to its company policy.

On the other hand, regarding whether to extend the above-mentioned arrangement to domestic cylinder LPG, oil companies expressed that the retail prices of domestic cylinder LPG are determined by individual distributors having regard to their own commercial strategies and market competition environment. They will not set any suggested retail prices of their cylinder LPG products for the distributors and neither will they require distributors to provide them with the resale prices. Also, with the implementation of competition law in Hong Kong, they have reservation to publish the prices of individual oil company on the Government's website.

- (2) According to the price adjustment mechanism set up by a major local LPG supplier (the Company) on its own initiative since 1999, the Company, once every three months (that is, at end of January, April, July and October), sets the prices for the coming three months by forecasting the import prices for the coming three months in light of the latest international LPG price (that is, Saudi Arabia Contract Price), and making positive or negative adjustment for any difference between the actual import prices and the forecast import prices in the last review. According to our observation, the adjustments of listed price of piped LPG of other oil companies in the market generally follow that of the Company. As the difference

between the forecast and actual import prices will be adjusted in the next review, the price of domestic LPG products would therefore reflect the movements of international LPG prices.

In summary, during each price adjustment review, we would ensure the Company makes adjustments in accordance with its forecast LPG import prices and makes the positive or negative price adjustments due to actual and forecast price difference in the last review. Therefore, the existing price adjustment mechanism should be able to reflect the changes in international LPG prices.

- (3) The Competition Ordinance fully commenced on 14 December 2015. The Competition Commission, as the independent statutory body to implement the Ordinance, will handle matters relating to price fixing as appropriate.
- (4) Retail prices of auto-fuels and domestic LPG in Hong Kong, similar to the prices of other consumer products, are determined by oil companies having regard to commercial practices and their operating costs. In a free market economy, the retail prices of auto-fuels in Hong Kong should be determined by the market. We do not consider that the Government should set a suggested retail price or an appropriate profit level for the fuels industry or other consumer products industries. The role of the Government is to endeavour to ensure a stable fuel supply, maintain market openness, and remove barriers to enter into the market to enhance competition. We also endeavour to improve the transparency of the prices of fuels products to facilitate consumers to make choices.

For auto-fuels products, we have commissioned the Consumer Council to post onto its website on a weekly basis, the local auto-fuels retail prices and information on various types of cash and non-cash discounts offered by oil companies, and to launch the "Auto-fuel Price Calculator" as well as relevant smartphone applications to promote price competition among oil companies and to facilitate consumers to make choices among the various discounts and benefits offered by oil companies. For domestic LPG products,

as mentioned in part (1), the majority of domestic piped LPG suppliers have published the updated domestic piped LPG price on their own website for customers' information.

### **Fostering a Bicycle-friendly Environment**

19. **DR ELIZABETH QUAT** (in Chinese): *President, in this year's Policy Address, the Government states that it will foster a "bicycle-friendly environment" in new towns and new development areas. However, there are comments that the Government's specific policies and measures in this respect are inadequate, failing to address the needs of cyclists. In this connection, will the Government inform this Council:*

- (1) *given that the Civil Engineering and Development Department is developing by phases a cycle track network of a total length of about 104 kilometres, which will link up the east and west of the New Territories and pass through the North District, Tai Po, Sha Tin, Yuen Long, Tuen Mun and Tsuen Wan, whether the Government will conduct a study on linking up the cycle tracks in the Sai Kung District (including Tseung Kwan O) with the aforesaid network; if it will, of the details; if not, the reasons for that;*
- (2) *given that the Sha Tin District Council has commissioned The Chinese University of Hong Kong to conduct a feasibility study on the introduction of a self-service bicycle hiring system and the outcome of the study is positive, whether the Government will reconsider implementing a trial scheme on the system in Sha Tin District with a view to extending the system to other districts upon successful trial; if it will, of the details; if not, the reasons for that;*
- (3) *whether the Government will reserve lands for the construction of cycle tracks when planning redevelopment projects in Kowloon and on the Hong Kong Island so as to progressively improve the cycle track networks in Kowloon and on the Hong Kong Island; if it will, of the details; if not, the reasons for that;*

- (4) *as more and more members of the public use bicycles as the mode of transport for them, and their demand for cycle parking spaces as well as ancillary facilities for cycle tracks is on the rise, whether the Government will review its policy of positioning bicycles as recreational sport equipment and re-position bicycles by making reference to overseas experience, so as to foster a bicycle-friendly environment; if it will, of the details; if not, the reasons for that;*
- (5) *as more and more people ride bicycles on the road, whether the Government will consider incorporating bicycle-friendly elements in road design; if it will, of the details; if not, the reasons for that; and*
- (6) *given that regulation 51 of the Road Traffic (Traffic Control) Regulations (Cap. 374G) provides that no person shall ride a bicycle on a road during the hours of darkness or in poor visibility conditions unless he shows a white light at the front and a red light at the rear of the bicycle, but the regulation does not set out any requirement on the brightness, illumination area and angle of the white light at the front, whether the Government will add the relevant requirements to this regulation so as to protect the safety of cyclists and other road users; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, the Government's current policy is to foster a "bicycle-friendly" environment where road safety and conditions permit, especially in new towns and new development areas, so as to promote cycling as a green mode for short-distance commuting and to reduce the use of mechanized transport. As such, cycling is no longer regarded as a leisure activity only. My reply to the various parts of Dr Elizabeth QUAT's question is as follows:

- (1) and (3)

According to the Development Bureau, it has explored the construction of a branch of the New Territories cycle track network connecting Ma On Shan and Sai Kung, and has examined various alignment options for the proposed cycle track. However, the

proposal met with numerous technical issues, including the need for large-scale tree felling and the impact on ecology, and so on. After having detailed review, the Development Bureau eventually decided to withdraw the proposal and announced the decision in 2014.

As for the proposal for extending the New Territories cycle track network to Tseung Kwan O, Tseung Kwan O is surrounded by hilly surroundings and the existing roads providing access to Tseung Kwan O (such as Hiram's Highway and New Clear Water Bay Road) are constructed along the hilly terrain with steep gradients, the existing roadsides are therefore not suitable for constructing cycle tracks. If a cycle track is to be constructed along the waterfront to Tseung Kwan O, it will involve issues like environmental impact and cost-effectiveness. Thus, the Development Bureau has no plan to extend the New Territories cycle track network to Tseung Kwan O at this stage.

As for new development areas in urban areas, the Government will consider introducing cycle track networks in potential projects during the planning stage. For instance, the Government is carrying out a large-scale urban development project at the former Kai Tak Airport. According to the Kai Tak Outline Zoning Plan, there is plan for a cycle track network of about 6.6 km in length within the Kai Tak Development Area (KTDA). In response to public aspiration for wider coverage of the cycle track network, the Development Bureau has proposed extending it to around 13 km, and has secured public support during the public consultation on the extension proposal. In future, the cycle track network of the KTDA will mainly be provided within open spaces. The cycle track network will link up major attractions in the KTDA, the Development Bureau will also explore the option of extending the network to the Mass Transit Railway station of the Shatin to Central Link under construction.

In addition, the West Kowloon Cultural District Authority (WKCD) will construct a cycle track in the West Kowloon Cultural District (WKCD) Park for public use.



- (2) Between 2010 and 2013, the Transport Department (TD) commissioned a consultancy study entitled "Traffic and Transport Consultancy Study on Cycling Networks and Parking Facilities in Existing New Towns in Hong Kong". Overseas experience, among other things, was studied in examining the feasibility of developing a self-service bicycle rental system in new towns. Conclusions of the study are as follows:
- (i) a self-service bicycle rental system needs to provide public bicycle rental service at various locations at the same time to facilitate rental, return and change of bicycles by locals and tourists. Only then would the system attract patronage;
  - (ii) a self-service bicycle rental system requires frequent transfer of bicycles to ensure that there are adequate bicycles available for rental at various rental points. The bicycles also need to be regularly maintained. Backup bicycles should also be available to replace those under repair or being stolen. Thus, the operating costs are relatively high; and
  - (iii) the existing private rental services can already meet the current market demand, so there is no need for a public rental system.

In addition, the land in Hong Kong is limited. It will be difficult to provide public bicycle rental systems at numerous locations. Therefore, we have to carefully examine the matter and no plan to introduce a self-service bicycle rental system at the moment.

Having said that, the WKCD has launched a pilot self-service bicycle rental scheme at the waterfront promenade of the WKCD, with two bicycle stations set up for public use. The WKCD will continue to assess and improve the service before the commissioning of the Park.

(4) and (5)

As mentioned above, the Government endeavours to promote a "bicycle-friendly" environment. New towns and new development areas with lower traffic density are more suitable for commuters to

use bicycles for short-distance commuting. Urban areas, on the other hand, are generally having heavier traffic and densely populated. With limited land and road spaces, it is very difficult to find suitable places for constructing cycle tracks in urban areas. Due to road safety considerations, the Government does not encourage the public to use bicycles as a mode of transport in urban areas.

The TD is conducting a consultancy study to examine ways to improve the existing cycling tracks and bicycle facilities in new towns, including, among others, the improvement of connectivity, the enhancement of safety and the provision of more bicycle parking spaces. The TD will implement the improvement measures proposed in the consultancy study in phases.

- (6) According to the Road Traffic (Traffic Control) Regulations and the Road Users' Code, a cyclist cycling at night or in poor visibility must switch on bicycle lamps, that is, a white light to the front and a red light to the rear. Currently, the regulations have not set out any requirements on the specifications of bicycle lamps and neither have some other developed countries (such as the Netherlands and Singapore) prescribed any statutory requirements on the specifications of bicycle lamps. We will conduct review from time to time having regard to actual circumstances (including safety considerations) to ensure that the regulations are in line with the actual need.

### **Support for Foreign Domestic Helpers**

20. **MS EMILY LAU:** *President, at present, there are some 341 000 foreign domestic helpers (FDHs) in Hong Kong, accounting for almost 9% of the workforce and making valuable contributions to the community. Concerning the support for FDHs in Hong Kong, will the Executive Authorities inform this Council:*

- (1) *whether the authorities currently offer shelter services to FDHs in emergency situations; if they do, of the number of such shelters, the capacity of each shelter, and the number of FDHs received by such shelters in the past three years;*
- (2) *whether the authorities offer subsidies or support to charitable or non-governmental organizations for them to provide shelter services for FDHs; if they do, of the number of such organizations and the details of the subsidies or support (in money or in kind) received by such organizations in the past three years;*
- (3) *given that an Indonesian domestic helper was killed by a concrete slab fallen from heights on 11 March last year when she was staying in a temporary hostel provided by an employment agency, whether the authorities have plans to regulate the provision of temporary hostels by employment agencies for FDHs, and step up inspections of such hostels; if they do, of the details of the plans; if not, the reasons for that; and*
- (4) *as the authorities operate several centres for FDHs to gather and carry out activities, of the number of applications for the use of such centres in the past three years, and the outcome of the applications; given that quite a number of FDHs congregate in pedestrian precincts, gardens and parks on their rest days, whether the authorities have plans to operate more centres so as to provide FDHs with more places to go on their rest days?*

**SECRETARY FOR LABOUR AND WELFARE:** President, my consolidated reply to the questions raised by Ms Emily LAU is provided below:

- (1) and (2)

The Social Welfare Department (SWD) provides necessary support for those people subjected to domestic violence or sexual violence (including foreign domestic helpers (FDHs) in Hong Kong). The SWD-subsided refuge centres for women and the CEASE Crisis Centre provide 24-hour support and short-term accommodation for

victims of domestic violence, sexual violence and/or those families or individuals in crisis. The Family Crisis Support Centre also provides crisis intervention, counselling and short-term accommodation for people in crisis or distress.

Currently, there are five refuge centres for women in Hong Kong, providing a total of 260 places. The CEASE Crisis Centre and the Family Crisis Support Centre provide 80 and 40 places respectively. In the past three years, the number of admitted person-times of FDHs of the above centres was as follows:

	<i>2013-2014</i>	<i>2014-2015</i>	<i>2015-2016 (Up to end of December 2015)</i>
Five refuge centres for women	1	0	1
CEASE Crisis Centre	2	2	1
Family Crisis Support Centre	Data is not available		
Total number of admitted person-times <sup>Note</sup>	3	2	2

Note:

As a service user of the refuge centres and CEASE Crisis Centre may have multiple admissions in a year, the number of persons admitted in each financial year is on the basis of person-times.

Non-governmental organizations and charitable organizations can also apply for the rent/rates/Government rent subsidy from the SWD for their self-financed welfare services. The SWD invites applications annually and assesses the applications received in accordance with the stipulated eligibility criteria. According to the SWD's record, there has not hitherto been any application under Rent/Rates/Government Rent Subsidy Scheme from organization for operating shelter for FDHs in Hong Kong.

- (3) Anyone who wishes to run an employment agency (EA) must first obtain a licence or a certificate of exemption issued by the Commissioner for Labour pursuant to Part XII of the Employment Ordinance (EO) (Cap. 57) and the Employment Agency Regulations (EAR) (Cap. 57A). The above legislation does not require EAs to provide boarding houses to job-seekers (including FDHs).

Same as other business entities, EAs that wish to provide temporary accommodation to anyone, have to obtain the relevant licence respectively if the mode of operation of the premises falls within the definition of "hotel" and "guesthouse" or "bedspace apartment" under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) or the Bedspace Apartments Ordinance (Cap. 447).

If any complaints or reports on unlicensed hotel or guesthouse or bedspace apartment are received, the Office of the Licensing Authority under the Home Affairs Department will investigate and follow up the cases in accordance with the established procedures, and instigate prosecution should there be sufficient evidence. Operating an unlicensed hotel or guesthouse or an unlicensed bedspace apartment is a criminal offence, and the operator is liable, on conviction, to a maximum fine of \$200,000 and \$100,000 respectively and imprisonment for two years, as well as imposition of a criminal record.

- (4) According to information from the Home Affairs Bureau, same as other members of the public and/or organizations, individual FDH and/or FDH organizations could, subject to meeting the relevant venue hiring conditions, book different public venues and facilities (such as sports and cultural venues and community hall facilities) from relevant departments for use or organization of various kinds of activities. The Government currently does not have any plan to provide facilities specifically for FDHs. The Government does not maintain statistics on the usage rate of venues provided to FDH by NGOs.

## **Government's Requests for Internet Service Providers to Disclose or Remove Users' Information**

21. **MR CHARLES PETER MOK** (in Chinese): *President, according to the Government Requests Report published biannually by Facebook, Inc., which operates an Internet social networking platform under the same name, the Hong Kong Government made 71 requests, involving 239 accounts, to the company for disclosure of its users' information (requests for information disclosure) in the first half of 2015. The numbers of such requests and the accounts involved were respectively 82% and 368% higher than those in the preceding half year, and more than half of such requests were not acceded to by the company. Moreover, the Transparency Report published biannually by Google, an Internet search-engine service provider, indicated that the company received from the Hong Kong Government 246 requests, involving 402 accounts, for information disclosure in the first half of 2015, yet the company acceded to only 35% of those requests. In this connection, will the Government inform this Council:*

- (1) *why the number of requests for information disclosure made by the Government to Facebook, Inc. in the first half of 2015 and the number of accounts involved were significantly higher than those in the preceding half year; of a breakdown of the number of such requests by government department; the legal bases and considerations (including but not limited to the facts and legal bases) for making such requests;*
- (2) *whether government departments are required to obtain the relevant court orders before making requests for information disclosure; if so, of the details; of the internal guidelines and mechanism based on which government departments make such requests;*
- (3) *of the biannual numbers of requests for information disclosure made by the Government to Internet service providers/Internet platforms/web sites (collectively referred to as "service providers") from 2011 to 2015, and the nature of the information involved (i.e. whether requests were made for providing metadata and/or content of communication), with a tabulated breakdown by government department; if it cannot provide such information, of the reasons for that;*

- 
- (4) *of the biannual numbers of requests made by the Government to service providers from 2011 to 2015 for removal of their users' information (requests for information removal) and the number of service providers involved, with a tabulated breakdown by government department; if such information cannot be provided, of the reasons for that;*
- (5) *of the details of the requests for information disclosure made by the Government to service providers since February 2015, including:*
- (i) names and types of service providers,*
  - (ii) total number of service providers,*
  - (iii) dates on which the requests were made,*
  - (iv) the last dates on which the requests were processed (irrespective of whether such requests were acceded to or not),*
  - (v) types of requests made,*
  - (vi) number of requests made, with a breakdown by reason (e.g. for investigation of cases, law enforcement and other reasons),*
  - (vii) total number of requests made,*
  - (viii) number of requests made under a court order,*
  - (ix) number of accounts involved,*
  - (x) volume of information requested for disclosure,*
  - (xi) nature of information requested for disclosure (i.e. requests for providing metadata and/or content of communication),*
  - (xii) number of requests acceded to, and*
  - (xiii) number of requests not acceded to, with a breakdown by reason received (e.g. the request was not made under a court order, failure to provide appropriate legal documents, insufficient justifications, not complying with the policies of service providers, and other reasons),*
- with a tabulated breakdown by government department; if such information cannot be provided, of the reasons for that;*
- (6) *of the details of the requests for information removal made by the Government to service providers since February 2015, including:*

- (i) *names and types of service providers,*
- (ii) *total number of service providers,*
- (iii) *dates on which the requests were made,*
- (iv) *the last dates on which the requests were processed (irrespective of whether such requests were acceded to or not),*
- (v) *types of requests made,*
- (vi) *number of requests made, with a breakdown by reason (e.g. for investigation into copyright infringement, sale of obscene and indecent articles, auction and sale of unregistered commodities, etc., and other reasons),*
- (vii) *number of requests made under a court order,*
- (viii) *number of accounts involved,*
- (ix) *volume of information requested for removal,*
- (x) *nature and details of information requested for removal,*
- (xi) *number of requests acceded to, and*
- (xii) *number of requests not acceded to, with a breakdown by reason received (e.g. the request was not made under a court order, failure to provide appropriate legal documents, insufficient justifications, not complying with the policies of service providers, and other reasons),*

*with a tabulated breakdown by government department; if such information cannot be provided, of the reasons for that;*

- (7) *given that according to the information published in the Korea Internet Transparency Report, the Ministry of Science, ICT and Future Planning of Korea and the Korea Communications Standards Commission have proactively released statistics on the requests made by the Korean Government to service providers for disclosure/removal of users' information, and that the Taiwanese Government has also progressively released the relevant statistics, whether the Government will consider making similar arrangements for the release, in a unified manner, of the numbers of such requests made by various government departments, so as to increase the transparency of the Government's work; if it will, of the details; if not, the reasons for that;*



- (8) *as a member of the public has relayed to me that when he enquired with certain government departments about the records on the requests they made to service providers for information disclosure/removal, the departments concerned indicated that no such records were maintained, and when he subsequently made enquiries again under the Code on Access to Information, he was only provided with part of the information; furthermore, some members of the public have pointed out that the replies given by different government departments on one same enquiry were contradictory and the bases for the replies were different, of the Government's justifications for claiming that the relevant mechanism has all along been functioning effectively; whether the Government has reviewed the practices currently adopted by various government departments for maintaining records and disclosing information; if it has, of the details; if not, the reasons for that; and*
- (9) *given that the Innovation and Technology Bureau has already been established, whether the Government will scrutinize if the procedures adopted by various government departments for making requests to service providers for information disclosure/removal are consistent with the principle of providing a fair and open business environment to the information technology sector, and if such procedures have invaded the privacy of members of the public; whether the Government will discuss with service providers to allow government departments to make public the information about the service providers involved in such requests; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR INNOVATION AND TECHNOLOGY** (in Chinese):  
President, regarding the nine-part question, having consulted the relevant bureaux and departments, our reply is as follows:

- (1), (5) and (6)

Details of the requests for information disclosure and information removal made by the Government to Internet service providers/Internet platforms/websites (service providers) (including Facebook) since February 2015 are set out in Table 1 and Table 2 respectively.

(3) and (4)

The biannual numbers of requests for information disclosure and information removal made by the Government to service providers and the nature of information sought during the period from 2011 to 2015 are set out in Table 3 and Table 4 respectively.

(2), (7) to (9)

In carrying out their duties, if the officers of individual government departments and law-enforcement agencies need to request for information or co-operation from the relevant persons or organizations (including service providers), it is mainly related to crime prevention and detection as well as law enforcement. They will ensure that these requests are made only when necessary for performing duties. They will also make the request in accordance with duty-related laws, established procedures or guidelines, including the Personal Data (Privacy) Ordinance and the relevant code of practice/guidelines.

When handling work-related records, government departments will retain the records in accordance with the guidelines stipulated in the Records Management Manual issued by the Government Records Service for future reference and as official evidence. The guidelines cover the creation, handling, custody, retention and disposal of records to ensure their proper management and protection. The guidelines are applicable to all work-related records, including the records on requests made by government departments to Internet service providers. If a request for information is received from the public, the government department will process the request in accordance with the Code on Access to Information.

Since the above mechanisms and guidelines are functioning effectively, we do not think it is necessary to put in place separate procedures for Internet service providers.

Table 1

Details of the requests for information disclosure made by the Government to service providers since February 2015

	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)	(xiii)
	Name and type of service providers <sup>(1)</sup>	Total number of service providers	Dates on which the requests were made	Deadlines for processing the requests (irrespective of whether such requests were accepted to or not)	Types of requests made	Number of requests made and the reasons	Total number of requests made	Number of requests made under a court order	Number of accounts involved	Amount of information requested for disclosure	Nature of information requested for disclosure	Number of requests acceded to	Number of requests not acceded to and the reasons
Government department													
Office of the Communications Authority	Internet service provider/ network platform/ website	14	10.2.2015 to 13.1.2016	Within two weeks after of making the request	Information of the registrant of the complaint-related Internet address	Number: 59 Reason: Investigation under the Unsolicited Electronic Messages Ordinance	59	0	59	59	Metadata	59	N/A
Companies Registry	Foreign service provider	1	15.5.2015	No deadline set	Request for contact information of person-in-charge of the website	Number: 1 Reason: Suspected infringement of the Companies Registry's copyright	1	0	3	3	Metadata	0	Number: 1 Reason: The service provider can only provide the relevant information with an order issued by the local Court.
Agriculture, Fisheries and Conservation Department	Website	1	27.8.2015	31.8.2015	Request for user registration information	Number: 1 Reason: Crime investigation	1	0	1	1	Metadata	1	N/A

	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)	(xiii)
	Name and type of service providers <sup>(1)</sup>	Total number of service providers	Dates on which the requests were made	Deadlines for processing the requests (irrespective of whether such requests were acceded to or not)	Types of requests made	Number of requests made and the reasons	Total number of requests made	Number of requests made under a court order	Number of accounts involved	Amount of information requested for disclosure	Nature of information requested for disclosure	Number of requests acceded to	Number of requests not acceded to and the reasons
Government department	Inland Revenue Department <sup>(2)</sup>	8	Cannot be provided	Cannot be provided	Cannot be provided	Number: 31 Reason: To enforce the Business Registration Ordinance (Cap. 310) and the Inland Revenue Ordinance (Cap. 112) by requiring persons carrying out business through the Internet to register their businesses and pay profits tax	31	Cannot be provided	22	Cannot be provided	Cannot be provided	18 (One request still under processing)	Cannot be provided
Customs and Excise Department (C&ED)	Internet service provider/ Internet platform/ website	13	1.2.2015 to 18.1.2016	No deadline set	Request for user account details or Internet Protocol (IP) address	Number: 128 Reason: Crime prevention and detection	128	0	199	199	Metadata	199	N/A

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)	(xiii)
Name and type of service providers <sup>(1)</sup>	Total number of service providers	Dates on which the requests were made	Deadlines for processing the requests (irrespective of whether such requests were acceded to or not)	Types of requests made	Number of requests made and the reasons	Total number of requests made	Number of requests made under a court order	Number of accounts involved	Amount of information requested for disclosure	Nature of information requested for disclosure	Number of requests acceded to	Number of requests not acceded to and the reasons
Hong Kong Local and foreign service providers	Relevant statistics are not available	1.2.2015 to 31.12.2015	No deadline set	Request for user information	Number: 3 760 Reason: Crime prevention and detection (primarily involving technology crimes or crimes relating to the use of the Internet)	3 760 <sup>(3)</sup>	Relevant statistics are not available	3 760 <sup>(3)</sup>	3 760 <sup>(3)</sup>	Metadata	Partially	In some cases, user accounts or records that do not exist are involved, or the registered user or IP address is not in Hong Kong. Under these circumstances, the service providers cannot provide the information.

Notes:

- (1) Since the question involves commercial information of a large number service providers, the names of individual service providers cannot be made public.
- (2) Except for the information provided herein, other information cannot be provided due to the secrecy provisions under the Business Registration Ordinance (Cap. 310) and the Inland Revenue Ordinance (Cap. 112).
- (3) Each request corresponds to one item of information and one user account only.

Table 2

Details of the requests for information removal  
made by the Government to service providers since February 2015

	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)
<i>Government department</i>	<i>Name and type of service providers<sup>(1)</sup></i>	<i>Total number of service providers</i>	<i>Dates on which the requests were made</i>	<i>Deadlines for processing the requests (irrespective of whether such requests were acceded to or not)</i>	<i>Types of requests made</i>	<i>Number of requests made and the reasons</i>	<i>Number of requests made under a court order</i>	<i>Number of accounts involved</i>	<i>Amount of information requested for removal</i>	<i>Nature and details of information requested for removal</i>	<i>Number of requests acceded to</i>	<i>Number of requests not acceded to and the reasons</i>
Office of the Communications Authority	Internet discussion forums	3	11.2.2015 to 3.11.2015	No deadline set	Removal of indecent content or display of the statutory warning notice	Number: 4 Reason: Contained indecent content	0	3	22 articles and several photos	Text and photos containing indecent content	4	N/A
Transport Department	Website	1	19.8.2015	No deadline set	Removal of an impostor Facebook account	Number: 1 Reason: The impostor Facebook account was set up in the name of the Transport Department and	0	1	1	Impostor Facebook account with the logo and name of the Transport Department	1	N/A

	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)
<i>Government department</i>	<i>Name and type of service providers<sup>(1)</sup></i>	<i>Total number of service providers</i>	<i>Dates on which the requests were made</i>	<i>Deadlines for processing the requests (irrespective of whether such requests were acceded to or not)</i>	<i>Types of requests made</i>	<i>Number of requests made and the reasons</i>	<i>Number of requests made under a court order</i>	<i>Number of accounts involved</i>	<i>Amount of information requested for removal</i>	<i>Nature and details of information requested for removal</i>	<i>Number of requests acceded to</i>	<i>Number of requests not acceded to and the reasons</i>
						disseminated wrong information						
Department of Health (DH) — Chinese Medicine Division	Internet platform/website	7	1.2.2015 to 31.12.2015	No deadline set	Request for taking appropriate action against the hyperlinks which contain information on suspected auction or sale of Chinese herbal medicines without trader licence/ unregistered proprietary Chinese medicines	Number: 39 Reason: Suspected auction or sale of Chinese herbal medicines without trader licence (3); unregistered proprietary Chinese medicines (36)	0	54	71 hyperlinks in total	Auction or sale information	39	N/A

	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)
<i>Government department</i>	<i>Name and type of service providers<sup>(1)</sup></i>	<i>Total number of service providers</i>	<i>Dates on which the requests were made</i>	<i>Deadlines for processing the requests (irrespective of whether such requests were acceded to or not)</i>	<i>Types of requests made</i>	<i>Number of requests made and the reasons</i>	<i>Number of requests made under a court order</i>	<i>Number of accounts involved</i>	<i>Amount of information requested for removal</i>	<i>Nature and details of information requested for removal</i>	<i>Number of requests acceded to</i>	<i>Number of requests not acceded to and the reasons</i>
DH — Drug Office	Internet platform/ website	14	1.2.2015 to 31.12.2015	No deadline set	Request for taking appropriate action against the hyperlinks which contain information on suspected auction or sale of controlled or unregistered medicines	Number: 141 Reason: Suspected auction or sale of controlled or unregistered medicines	0	471	1 004 hyperlinks in total	Auction or sale information	141	N/A
DH — Family Health Service	Internet platform/ Video sharing	1	1.7.2015 to 31.12.2015	No deadline set	Removal of video	Number: 4 Reason: Upload and release four videos of the DH without the DH's consent	0	1	4	Video — Transitional Feeding (six to 24 months)	4	N/A



	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	(xii)
<i>Government department</i>	<i>Name and type of service providers<sup>(1)</sup></i>	<i>Total number of service providers</i>	<i>Dates on which the requests were made</i>	<i>Deadlines for processing the requests (irrespective of whether such requests were acceded to or not)</i>	<i>Types of requests made</i>	<i>Number of requests made and the reasons</i>	<i>Number of requests made under a court order</i>	<i>Number of accounts involved</i>	<i>Amount of information requested for removal</i>	<i>Nature and details of information requested for removal</i>	<i>Number of requests acceded to</i>	<i>Number of requests not acceded to and the reasons</i>
C&ED	Internet service provider/ Internet platform/ website	2	1.2.2015 to 18.1.2016	No deadline set	Request to remove user account or hyperlink	Number: 31 Reason: Stoppage of infringing activities	0	31	31	User account or hyperlink	31	N/A
Hong Kong Police Force	Local and foreign service providers	Relevant statistics are not available	1.2.2015 to 31.12.2015	No deadline set	Removal of information related to specific users	Number: 87 Reason: Crime prevention primarily involving technology crimes or crimes relating to the use of the Internet	Relevant statistics are not available	87 <sup>(2)</sup>	87 <sup>(2)</sup>	Mainly involving obscene articles, phishing websites <sup>(3)</sup> and accessing computer with criminal/dishonest intent	Partially	Most of the organizations concerned removed the relevant information as requested by the Police.

Notes:

- (1) Since the question involves commercial information of a large number service providers, the names of individual service providers cannot be made public.
- (2) Each request corresponds to one item of information and one user account only.
- (3) Phishing websites are fake websites for stealing others' login name and password.

Table 3

Biannual numbers of requests for information disclosure  
made by the Government to service providers  
and the nature of information sought during the period from 2011 to 2015

<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Nature of the information sought (whether requests were made for providing metadata and/or content of communication)</i>
Office of the Communications Authority	January to June 2011	12	Metadata
	July to December 2011	21	Metadata
	January to June 2012	13	Metadata
	July to December 2012	29	Metadata
	January to June 2013	39	Metadata
	July to December 2013	32	Metadata
	January to June 2014	33	Metadata
	July to December 2014	34	Metadata
	January to June 2015	36	Metadata
	July to December 2015	28	Metadata
Companies Registry	January to June 2011	0	-
	July to December 2011	0	-
	January to June 2012	0	-
	July to December 2012	3	Metadata
	January to June 2013	6	Metadata
	July to December 2013	1	Metadata
	January to June 2014	1	Metadata
	July to December 2014	0	-
	January to June 2015	1	Metadata
	July to December 2015	0	-

<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Nature of the information sought (whether requests were made for providing metadata and/or content of communication)</i>
Agriculture, Fisheries and Conservation Department	January to June 2011	0	-
	July to December 2011	0	-
	January to June 2012	0	-
	July to December 2012	0	-
	January to June 2013	1	Metadata
	July to December 2013	0	-
	January to June 2014	0	-
	July to December 2014	1	Metadata
	January to June 2015	0	-
	July to December 2015	1	Metadata
Home Affairs Department	January to June 2011	0	-
	July to December 2011	0	-
	January to June 2012	0	-
	July to December 2012	0	-
	January to June 2013	0	-
	July to December 2013	0	-
	January to June 2014	0	-
	July to December 2014	1	Metadata
	January to June 2015	0	-
July to December 2015	0	-	
Inland Revenue Department <sup>(1)</sup>	January to June 2011	0	-
	July to December 2011	8	Cannot be provided
	January to June 2012	2	Cannot be provided
	July to December 2012	1	Cannot be provided
	January to June 2013	1	Cannot be provided
	July to December 2013	1	Cannot be provided
	January to June 2014	9	Cannot be provided
	July to December 2014	23	Cannot be provided
	January to June 2015	14	Cannot be provided
July to December 2015	20	Cannot be provided	

<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Nature of the information sought (whether requests were made for providing metadata and/or content of communication)</i>
C&ED <sup>(2)</sup>	January to June 2011	613	Metadata
	July to December 2011		
	January to June 2012	579	Metadata
	July to December 2012		
	January to June 2013	881	Metadata
	July to December 2013		
	January to June 2014	362	Metadata
	July to December 2014	110	Metadata
	January to June 2015	110	Metadata
	July to December 2015	96	Metadata
Hong Kong Police Force	January to June 2011	2 208	Metadata
	July to December 2011	1 895	Metadata
	January to June 2012	2 260	Metadata
	July to December 2012	2 353	Metadata
	January to June 2013	2 094	Metadata
	July to December 2013	2 295	Metadata
	January to June 2014	1 905	Metadata
	July to December 2014	2 095	Metadata
	January to June 2015	2 205	Metadata
	July to December 2015	1 792	Metadata

## Notes:

- (1) Except for the information provided herein, other information cannot be provided due to the secrecy provisions under the Business Registration Ordinance (Cap. 310) and the Inland Revenue Ordinance (Cap. 112).
- (2) The C&ED only has yearly figures but not half-yearly figures for 2011 to 2013.

Table 4

Biannual numbers of requests made by the Government to service providers for removal of their users' information and the number of service providers involved during the period from 2011 to 2015

<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Number of service providers involved</i>
Office of the Communications Authority	January to June 2011	2	2
	July to December 2011	1	1
	January to June 2012	0	0
	July to December 2012	1	1
	January to June 2013	1	1
	July to December 2013	1	1
	January to June 2014	0	0
	July to December 2014	0	0
	January to June 2015	3	2
	July to December 2015	1	1
Transport Department	January to June 2011	0	0
	July to December 2011	0	0
	January to June 2012	0	0
	July to December 2012	0	0
	January to June 2013	0	0
	July to December 2013	0	0
	January to June 2014	0	0
	July to December 2014	0	0
	January to June 2015	0	0
	July to December 2015	1	1
Hong Kong Observatory	January to June 2011	0	0
	July to December 2011	0	0
	January to June 2012	0	0
	July to December 2012	2	1
	January to June 2013	0	0
	July to December 2013	0	0
	January to June 2014	0	0
	July to December 2014	0	0
	January to June 2015	0	0
	July to December 2015	0	0

<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Number of service providers involved</i>
Lands Department	January to June 2011	0	0
	July to December 2011	1	1
	January to June 2012	0	0
	July to December 2012	0	0
	January to June 2013	0	0
	July to December 2013	0	0
	January to June 2014	0	0
	July to December 2014	0	0
	January to June 2015	0	0
	July to December 2015	0	0
Leisure and Cultural Services Department	January to June 2011	0	0
	July to December 2011	0	0
	January to June 2012	0	0
	July to December 2012	0	0
	January to June 2013	0	0
	July to December 2013	1	1
	January to June 2014	8	4
	July to December 2014	0	0
	January to June 2015	0	0
	July to December 2015	0	0
Agriculture, Fisheries and Conservation Department	January to June 2011	0	0
	July to December 2011	0	0
	January to June 2012	1	1
	July to December 2012	0	0
	January to June 2013	1	1
	July to December 2013	0	0
	January to June 2014	0	0
	July to December 2014	1	1
	January to June 2015	0	0
	July to December 2015	0	0
Hongkong Post	January to June 2011	0	0
	July to December 2011	0	0
	January to June 2012	0	0
	July to December 2012	0	0

<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Number of service providers involved</i>
	January to June 2013	1	1
	July to December 2013	0	0
	January to June 2014	0	0
	July to December 2014	0	0
	January to June 2015	0	0
	July to December 2015	0	0
Civil Aid Service	January to June 2011	0	0
	July to December 2011	0	0
	January to June 2012	0	0
	July to December 2012	0	0
	January to June 2013	0	0
	July to December 2013	0	0
	January to June 2014	0	0
	July to December 2014	0	0
	January to June 2015	1	1
	July to December 2015	0	0
DH — Chinese Medicine Division	January to June 2011	0	0
	July to December 2011	5	1
	January to June 2012	14	2
	July to December 2012	4	1
	January to June 2013	30	5
	July to December 2013	30	7
	January to June 2014	49	6
	July to December 2014	15	5
	January to June 2015	23	4
	July to December 2015	16	5
DH — Drug Office	January to June 2011	30	3
	July to December 2011	60	11
	January to June 2012	50	3
	July to December 2012	66	2
	January to June 2013	80	8
	July to December 2013	110	10
	January to June 2014	131	7
	July to December 2014	109	6
	January to June 2015	74	5
	July to December 2015	83	12

<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Number of service providers involved</i>
DH — Family Health Service	January to June 2011	0	0
	July to December 2011	0	0
	January to June 2012	0	0
	July to December 2012	0	0
	January to June 2013	0	0
	July to December 2013	0	0
	January to June 2014	0	0
	July to December 2014	0	0
	January to June 2015	0	0
	July to December 2015	4	1
C&ED <sup>(1)</sup>	January to June 2011	71	1
	July to December 2011		
	January to June 2012	67	2
	July to December 2012		
	January to June 2013	372	10
	July to December 2013		
	January to June 2014	65	3
	July to December 2014	44	1
	January to June 2015	21	2
	July to December 2015	11	3
Hong Kong Police Force	January to June 2011	5	Relevant statistics are not available
	July to December 2011	7	Relevant statistics are not available
	January to June 2012	10	Relevant statistics are not available
	July to December 2012	13	Relevant statistics are not available
	January to June 2013	22	Relevant statistics are not available
	July to December 2013	8	Relevant statistics are not available
	January to June 2014	23	Relevant statistics are not available
	July to December 2014	98	Relevant statistics are not available



<i>Government department</i>	<i>Period</i>	<i>Number of requests</i>	<i>Number of service providers involved</i>
	January to June 2015	65	Relevant statistics are not available
	July to December 2015	31	Relevant statistics are not available

Note:

- (1) The C&ED only has yearly figures but not half-yearly figures for 2011 to 2013.

### **Medical Complaints and Claims of Medical Negligence**

22. **DR LEUNG KA-LAU** (in Chinese): *President, regarding medical complaints and claims of medical negligence received by the Hospital Authority (HA), will the Government inform this Council whether it knows:*

- (1) *the number of claims of medical negligence received by each public hospital in each of the past five years (i.e. from 1 January 2011 to 31 December 2015), and set out a breakdown by case type in tables of the same format as Table 1;*

(Table 1) *Numbers of claims of various types*

*Hospital:* \_\_\_\_\_

<i>Case type</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>

- (2) *among the complaints handled by each public hospital in each of the past five years, the number of cases which were found to be substantiated and needed follow-up actions, the respective numbers of cases in which different types of healthcare personnel (i.e. doctors, nurses and allied health professionals) involved were punished and the forms of punishment they received, and set out a breakdown of those cases by type and rank of such personnel in tables of the same format as Table 2;*

(Table 2) *A breakdown of the cases in which healthcare personnel were punished*

<i>Healthcare personnel</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>Doctors: (of different ranks)</i>					
<i>Nurses: (of different ranks)</i>					
<i>Allied health professionals: (of different grades and ranks)</i>					

- (3) *given that complainants may appeal to the Public Complaints Committee (PCC) of HA against the decisions made by public hospitals in respect of their complaints, the number of such appeal cases received by PCC in each of the past five years; among them, the number of those found to be substantiated or partly substantiated (set out in Table 3);*

(Table 3) *Number of appeal cases received by PCC*

<i>Appeal cases</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>Total</i>					
<i>Number of cases found to be substantiated or partly substantiated</i>					

- (4) *the number of claims of medical negligence in each of the past five years, broken down by different handling methods/results (set out in Table 4);*

(Table 4) *Number of claims of medical negligence, broken down by different handling methods/results*

<i>Handling methods/results</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>Settled out of court</i>					
<i>Referred to mediation</i>					

<i>Handling methods/results</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>Settled during mediation</i>					
<i>Settled after mediation</i>					
<i>Referred to arbitration</i>					
<i>Settled through arbitration</i>					
<i>Ruled by the court</i>					
<i>Total</i>					

- (5) *the number of claims for which compensation was paid to the patients concerned or their families by HA in each of the past five years, and the respective total amounts of compensation paid and relevant costs incurred for various types of claims (set out in Table 5); and*

(Table 5) *Total amounts of compensation paid and relevant costs incurred for various types of claims*

<i>Type of compensation/costs</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>Total amount of compensation paid</i>					
<i>Total amount of compensation paid in respect of cases settled out of court</i>					
<i>Total amount of compensation paid pursuant to the agreements reached by mediation</i>					
<i>Total amount of compensation paid pursuant to arbitration awards</i>					



**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, the Hospital Authority (HA) has a two-tier system to handle complaints from patients and the public. The first tier is at the hospital level which covers the handling of all complaints lodged for the first time. If the complainants are not satisfied with the outcome of the complaint, they may appeal to the second tier, that is the Public Complaints Committee (PCC) of the HA. PCC is a committee established under the HA Board responsible for independently considering and deciding on all appeal cases and putting forward recommendations on service improvement to the HA. Members of PCC are not employees of the HA and, by virtue of their independent status, will handle all complaints fairly and impartially. My reply to various parts of the question raised by Dr LEUNG Ka-lau on the medical complaints and claims arising from medical incidents received by the HA is as follows:

- (1) The HA has not classified the cases of claims arising from medical incidents by nature. The table below sets out the number of claims received by the HA by cluster in the past five years:

<i>Cluster</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
Hong Kong East	17	16	11	11	5
Hong Kong West	12	10	7	10	6
Kowloon Central	15	18	11	9	12
Kowloon East	14	15	10	12	10
Kowloon West	31	33	38	36	25
New Territories East	24	25	40	16	13
New Territories West	21	15	21	26	12

- (2) One of the main objectives of the HA's complaint mechanism is to, during the course of complaint handling, help resolve problems for the complainants and improve service delivery. Hence, when the HA handles the cases, the emphasis is not on whether the cases are substantiated. In fact, whenever room for improvement in the delivery of service is identified in the handling of complaints, the HA will take appropriate follow-up actions irrespective of whether

the cases are substantiated or not. The HA does not keep statistics on whether the complaint cases handled at the first-tier level are substantiated or not.

The HA has put in place an established mechanism to handle disciplinary matters of its staff. Disciplinary actions taken are not confined to cases relating to medical complaints and claims. The HA will consider the seriousness of the incidents and take appropriate disciplinary actions. Such disciplinary actions include counselling, verbal or written warnings, and dismissal for cases of gross misconduct.

The HA does not maintain statistics on disciplinary actions by type and by rank of staff. The table below sets out the number of disciplinary actions taken by the HA in the past five years:

<i>Year</i>	<i>Number of disciplinary actions</i>
2010-2011	267
2011-2012	324
2012-2013	302
2013-2014	363
2014-2015	322

- (3) The table below sets out the statistics on the appeal cases handled by PCC of the HA in the past five years:

<i>Appeal cases</i>	<i>Year</i>				
	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015*</i>
Total number of cases	260	226	270	285	156
Number of substantiated or partially substantiated cases	19	12	21	16	9

Note:

\* Figures for 2015 are as at the second quarter of that year.

(4) and (5)

The tables below set out the statistics on cases of claims received by the HA in respect of medical incidents in the past five years:

Number of claims and handling methods  
(as at end December 2015)

<i>Year in which claims<sup>(1)</sup> were reported</i>	2011	2012	2013	2014	2015
Number of claims <sup>(2)</sup>	134	132	138	120	83
Number of claims settled out of court <sup>(3)</sup>	42	26	24	21	5
Number of claims referred to mediation <sup>(4)</sup>	3	1	2	1	1
(i) Number of claims settled during mediation	1	1	2	0	1
(ii) Number of claims settled after mediation	2	0	0	0	0
Number of claims referred to arbitration	0	0	0	0	0
Number of claims settled through arbitration	0	0	0	0	0
Number of claims ruled by the Court	0	0	0	0	0

Amount of compensation and relevant costs for cases of claims  
(as at end December 2015)

(all figures are round numbers and in million dollars)

<i>Year in which claims<sup>(1)</sup> were reported</i>	2011	2012	2013	2014	2015
Total amount of compensation <sup>(5)</sup> paid in respect of claims settled out of court <sup>(3)</sup>	32.9	8.56	10.09	11.41	0.72
Amount of compensation paid pursuant to arbitration awards	0	0	0	0	0
Amount of compensation paid pursuant to court rulings	0	0	0	0	0

<i>Year in which claims<sup>(1)</sup> were reported</i>	2011	2012	2013	2014	2015
Fees paid by the HA to mediators	0.02	0.01	0.02	0.02	0.03
Arbitration fees paid by the HA	0	0	0	0	0
Legal fees paid by the HA in respect of claims settled out of court	10.38	3.63	3.27	0.86	0.17

Notes:

- (1) Cases reported under the medical incidents insurance scheme of the HA.
- (2) The number of claims in a particular year as set out in the above tables include the number of claims settled through mediation and out of court. For example, for the cases reported in 2011, as at end December 2015, a total of 134 cases of claims were received, of which 42 were settled out of court.
- (3) Including claims settled out of court after legal proceedings had commenced.
- (4) The number of cases under this category has already been included in the number of claims settled out of court.
- (5) The total amount of compensation in this row includes a sum of \$5.49 million paid as compensation for claims settled during mediation. As the compensation agreements must be kept confidential and the number of claims settled during mediation is relatively small, the HA is unable to provide a breakdown of the compensation paid according to agreements reached by mediation.
- (6) The hospitals and PCC will, upon receipt of the complaint cases, handle them as soon as possible. As each case varies in complexity, the time required for handling individual cases is different.

Some complaint cases cannot be concluded within the target response time possibly because of the involvement of several hospitals or several departments within a hospital in the case, the need for multiple clarification or evidence collection during investigation, the involvement of complex clinical management in the case, or the need to seek advice from independent medical experts.



The table below sets out the number of complaint cases handled by PCC and the HA by clusters that were completed beyond the target response time:

Year	PCC	Cluster						
		Hong Kong East	Hong Kong West	Kowloon Central	Kowloon East	Kowloon West	New Territories East	New Territories West
2011	78	14	5	14	2	26	12	9
2012	54	5	2	4	0	12	23	4
2013	89	8	4	35	27	37	42	2
2014	78	1	2	44	13	40	62	6
2015*	80	0	19	3	1	9	33	1

Note:

\* Figures for 2015 are as at the second quarter of that year.

## **BILLS**

### **First Reading of Bill**

**DEPUTY PRESIDENT** (in Cantonese): Bill: First Reading.

### **SECURITIES AND FUTURES (AMENDMENT) BILL 2016**

**CLERK** (in Cantonese): Securities and Futures (Amendment) Bill 2016.

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

### **Second Reading of Bill**

**DEPUTY PRESIDENT** (in Cantonese): Bill: Second Reading.

**SECURITIES AND FUTURES (AMENDMENT) BILL 2016**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, I move the Second Reading of the Securities and Futures (Amendment) Bill 2016 (the Bill).

The main objective of the Bill is to amend the Securities and Futures Ordinance (the Ordinance) and to introduce a new open-ended fund company (OFC) structure in Hong Kong.

An open-ended investment fund may be established under the existing laws in the form of a unit trust due to various restrictions on capital reduction under the Companies Ordinance.

The proposed OFC structure will allow funds to be set up in the form of a company, but with the flexibility to create and cancel shares for investors to trade the funds. This kind of fund structure is getting common internationally.

The introduction of OFCs in Hong Kong will provide an extra option for fund structure and create a more flexible business environment for fund managers, which in turn could attract more funds to choose to domicile in Hong Kong. This helps to diversify fund types, expand the fund distribution network and promote fund origination in Hong Kong.

An OFC is an open-ended collective investment scheme, which is structured in corporate form with limited liability and variable share capital. Its structure will have characteristics similar to a conventional limited company in that it will have a legal personality and the Instrument of Incorporation; it will be governed by a board of directors who are subject to fiduciary duties, and the liability of its shareholders will be limited to the amount unpaid on their shares in the company.

Being an investment vehicle, an OFC has the following characteristics:

- (1) will not be bound by restrictions on the reduction of share capital, and will have the flexibility to vary its share capital in order to meet shareholder subscription and redemption requests;

- (2) will not be bound by restrictions on distribution out of share capital, and may distribute out of share capital subject to solvency and disclosure requirements; and
- (3) in case an OFC is terminated for commercial reasons, it can make use of the streamlined termination arrangement.

In view of an OFC's nature as an investment fund, the Securities and Futures Commission (SFC) will be the primary regulator responsible for the registration and regulation of OFCs under the Ordinance. The SFC will be empowered by the Ordinance to make subsidiary legislation and to publish a code or guideline on the incorporation, management, operation, and business of OFCs. The Registrar of Companies (CR) will be responsible for the incorporation and administration of statutory corporate filings.

While facilitating market development, the proposed system is also equipped with sufficient protective measures to investors which include:

- (1) The directors, the investment manager and the custodian will have to meet some basic eligibility Requirements;
- (2) The OFC board will be legally responsible for all the affairs of the company and will provide an additional layer of oversight for shareholders;
- (3) The investment management functions should be delegated to an investment manager who is appointed by the OFC board. And the investment manager is required to be licensed by or registered with the SFC;
- (4) The assets of an OFC must be entrusted to an independent custodian for safekeeping; and
- (5) In addition to registration, funds set up in the form of OFCs which seek to offer their shares to the public must seek the SFC authorization under the Ordinance. They also have to comply with the related requirements of the SFC Handbook, including the disclosure requirements.

Deputy President, the OFC system is a proposal in response to the market need and is a more flexible investment fund vehicle. We have already consulted the public and the industry in respect of the proposal. Respondents were generally supportive of the introduction of a Hong Kong OFC. I hope that Members can support the Bill so that the proposal can be implemented as soon as possible. The proposal will diversify our fund domiciliation platform, which will in turn promote the development of related industries. This would help strengthen Hong Kong's position as an international asset management centre and foster the further development of our financial services sector as a whole.

Deputy President, I so submit.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Securities and Futures (Amendment) Bill 2016 be read the Second time.

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

### **Remaining proceedings after the Second Reading**

#### **COPYRIGHT (AMENDMENT) BILL 2014**

**DEPUTY PRESIDENT** (in Cantonese): This Council agreed to the motion for the Second Reading of the Copyright (Amendment) Bill 2014 at the meeting of 20 January 2016. Ms Cyd HO has moved a motion under Rule 55(1)(a) of the Rules of Procedure that the Bill be committed to a select committee.

This Council now continues the debate on the motion.

I now call upon Dr Fernando CHEUNG to continue with his speech.

**DR FERNANDO CHEUNG** (in Cantonese): Deputy President, I now continue with my unfinished speech last week. My speech is about the motion moved by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure, which seeks to commit the proposed amendments to the Copyright (Amendment) Bill 2014 (the Bill) to a select committee for thorough deliberation, so that after we have sorted

out the various problems with the proposed amendments, the Bill can be submitted to the Legislative Council for scrutiny again. I think this is a way out, one which can enable us to have the best of both worlds. I already presented my arguments last week, and I do not intend to repeat them now.

Some changes have indeed occurred over the past week, but regrettably, the changes are depressing rather than beneficial and positive. Chief Secretary for Administration Carrie LAM says that Members are duty-bound to pass the Bill. According to her, the passage of the motion on the resumption of the Second Reading debate on the Bill reflects the support of the Bill by the Legislative Council, so the Third Reading debate should be about technicalities only.

I beg to differ with her on this point. First of all, does the passage of the said motion necessarily mean that the Bill is rid of contention? Does it necessarily mean that only technicalities are left to be considered and the Bill will surely be passed? The answers are obviously in the negative. Some people say that as we are in principle against the Bill, we should have voiced our objection during the resumption of the Second Reading debate on the Bill. But as we all know, this present Council cannot truly reflect the views of the people because Members who got more than half of the votes in the election only take up one third of the seats, while Members who got less voting support are in the majority here. Hence, even though this Council has passed the Bill, the passage cannot be taken to mean that Hong Kong society as a whole is likewise supportive of the Bill. This is a very important point.

Secondly, we have proposed amendments focusing on three different aspects. These amendments are not yet endorsed, so we must naturally continue to oppose the Bill, and this obviously indicates that we have not accepted the Bill. I have to make this point clear. Chief Secretary for Administration Carrie LAM says that if the pan-democratic camp has any good ideas, she will be all ears, and she also hopes that the present deadlock can be resolved. But regrettably, she has also made it clear that she will not accept our amendments. In that case, how can it be possible to resolve the deadlock? This approach is in fact a very forcible one. She also says that she will seek both time and opportunities for holding meetings as far as humanly possible. She wants to keep holding additional meetings until no Members want to speak. It is obvious that she wants to resolve the problem by means of a forcible approach.

She knows that the Bill already has enough voting support, and this explains why she is so unreasonable in her approach. Even though she knows that the Bill is controversial and likely to make people break the law inadvertently (The case involving the Chief Executive, to begin with, is the best example showing how far-reaching this draconian law is and how easily ordinary people may break the law), she still insists on having the Bill passed. As a result, everybody is bound. Pro-establishment Members are bound, and so are pan-democratic Members. We pan-democratic Members are bound because ... She wouldn't think that I like the idea of using Council business time to discuss the Bill, would she? The best way is to set aside the Bill and commit it to a select committee. Why does the Government insist on having the Bill passed now?

Deputy President, I do not see any urgency here. Will delaying the passage of the Bill for several more months seriously undermine the protection for copyright owners' interests, in turn affecting the all-important issue of developing the economy of Hong Kong? Or, will this render us unable to encourage creativity? I do not think so. Then, why must the Government bulldoze the Bill through this Council now? The Government's approach will only waste the precious time of the Council.

Deputy President, many livelihood issues need to be handled urgently by this Council. They are all about people in dire straits. As far as housing is concerned, people cannot find affordable and proper homes. As the authorities say, they simply cannot meet their 10-year housing construction target. We very much want to help people living in "sub-divided units". And, the poverty rates of elderly people and people with disabilities are high. We still have many issues to tackle, such as the Territory-wide System Assessment now under heated debate. And, we also need to discuss many other items of business. So, why must the Government insist on passing the Bill first and holding up discussion on all other issues in the meantime? I do not see any urgency here. Quite the contrary, I only see the hegemony of the Government. The Government only wants to save face, thinking that "I must have the Bill passed, so you had better do it. If you stir up any trouble or if you filibuster, I will request additional meetings. I will not accept your amendments. You say it is a draconian bill? Then, I will force you to see its passage." Do Hong Kong people want to see such a mode and attitude of governance? Is this helpful to Hong Kong? Or, does the Government only want to save face? Why must it insist on having the Bill passed?

Now, we all agree in principle that the Copyright Ordinance (the Ordinance) should be amended. We agree that amendment should be introduced to enable the Ordinance to progress with the times. But we think that many details need to be discussed. Our proposals are actually not very different from those of the Government. The Government proposes six exceptions, and we only want to broaden the scope by introducing the fair use doctrine lest there may be omissions. Our amendments with three specific focuses are sensible and other countries have adopted the related doctrines. If the Government is of the view that our amendments are too general, we can discuss them further. Why not? Why must the Government insist on having the Bill passed now? Why can't it agree to the motion moved under Rule 55(1)(a) of the Rules of Procedure to commit the Bill to a select committee for further discussion? Why must the Government bundle the two sides here to fight against each other? Any fight will only make both sides suffer, or even end up in mutual destruction. I cannot see any good in this.

**MR ABRAHAM SHEK:** Deputy President, on behalf of the Business and Professionals Alliance for Hong Kong, I speak against the motion.

Deputy President, time and tide awaits no man. We have already wasted lots of invaluable parliamentary time since 9 December last year to get through the hurdles ingeniously set up by the pan-democrats to thwart the passage of the Copyright (Amendment) Bill 2014 (the Bill). We just cannot afford any further loss of parliamentary time, given that the four-year term of the Legislative Council shall soon end with only a few months left while this Council still has a great deal of outstanding business to complete.

Ms Claudia MO said that a select committee would provide every stakeholder with more room and time to seek clarifications on concepts that seemed unclear and vague in the Bill. The fact, however, is that the Bills Committee on Copyright (Amendment) Bill 2014 (the Bills Committee) has duly finished its mission, and Bills Committee Chairman Mr CHAN Kam-lam will propose three amendments at the Committee stage for refining the Bill. That means the unsettled will be settled at the Committee stage. In the light of this, why should we bother to disturb what is already settled? Except for creating room for filibustering, there is no point of this Council to waste time and resources by taking a detour to set up a select committee when it is clear that advancing to the Committee stage will provide more direct responses to the unsettled matters.

The specious argument that passing the onus on to a select committee can free time for this Council to clear up its unfinished business is untenable and grossly naïve. First, as mentioned, it will waste even more time by duplicating our efforts to scrutinize the Bill on the one hand while deferring the passage of the Bill indefinitely on the other. Second, parliamentary time is not merely about the time spent on Council meetings: various panels, bills committees and subcommittees are in full swing, and we all know that the Establishment Subcommittee, the Public Works Subcommittee and the Finance Committee are already crippled due to the pan-democrats' filibustering. It is not pragmatic to further overload the staff of the Legislative Council Secretariat with yet more avoidable work — they are already exhausted. Third, deference to the work of the Bills Committee is a well-established convention for the Legislative Council to act as a gatekeeper to deliberate bills in an effective and efficient fashion. We will set a very bad precedent to undermine such a convention by any attempt to discredit the Bills Committee's work.

Deputy President, we must act in good faith and discharge our duties in the same manner as we took the oath in this Chamber at the commencement of this term of the Legislative Council, or we will do a disservice to the doctrine of separation of powers ...

(Mr LEUNG Kwok-hung stood up)

**DEPUTY PRESIDENT** (in Cantonese): Mr Abraham SHEK, please sit down first. Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, I think a quorum is not present here.

**DEPUTY PRESIDENT** (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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



**DEPUTY PRESIDENT** (in Cantonese): Mr Abraham SHEK, please continue.

**MR ABRAHAM SHEK** (in Cantonese): Deputy President, a moment ago, Dr Fernando CHEUNG said that we would end up in mutual destruction. But then, after throwing me into the sea, he himself got into a life buoy and swam away. *(Laughter)*

**MR ABRAHAM SHEK**: Deputy President, we must act in good faith and discharge our duties in the same manner as we took the oath in this Chamber at the commencement of this term of the Legislative Council, or we will do a disservice to the doctrine of separation of powers if we allow or acquiesce in any abuse of the parliamentary procedures in the guise of democracy and liberty.

Suffice to say, facts have been laid before us. In last week's Second Reading debate, two keywords emerged representing the very essence of the Bill that must be underlined here. They are "creativity" and "copyright". It is amazing how such simple words can be expounded to profound philosophical interpretations, arguments and concepts. The polarized arguments on these two simple "C" words ("creativity" and "copyright") can be understood from the advocacies of two prominent Members of this august Council.

Deputy President, it is imperative to recap the key concepts as illustrated by Mr Martin LIAO and Mr Dennis KWOK last week, which can help us distinguish facts from opinions and hence reject Ms Cyd HO's request. Mr Martin LIAO talked about the significance of having an established and well-tested regime for copyright. He thinks that apart from giving protection to innovators, it can further stimulate and breed creativity without any fear of infringement. This indeed is a very safe approach to find a balance between copyright owners and ordinary users.

He uses the capital "C" for copyright, whereas Mr Dennis KWOK uses the capital "C" for creativity. Mr KWOK argues that a copyright regime must be broad and liberal to ensure that it will, by no means, stifle imagination and the metamorphosis of ideas to stimulate creativity. This concept is indeed very innovative and liberal. But, Deputy President, creativity without restraints is likened to running an express train without any railroad track and will lead to disaster.

In summary, do we want creativity that transcends conformity? Or, do we want creativity that is subsumed into conformity? This is the very question this Council needs to decide without further delays. Can a select committee bridge a philosophical divide such as this? Can a select committee better deal with a typical matter of opinions when eternal truth seems non-existent? Shall we extend the current adversarial debate to a select committee and make it even more adversarial? Our learned colleagues should know very well about the answers — the answers are "No".

Deputy President, whether establishing a select committee can make a breakthrough to eliminate the ideological or philosophical differences, and whether a select committee can discover more meaningful insights are dubious. The Bill has been sufficiently and thoroughly debated not only in this Council, but also in the Bills Committee, which spent around 16 months to scrutinize the Bill. On the contrary, against Mr Kenneth LEUNG's subjective wish, it is arguable that resorting to a select committee will only create another arena for bitter political diatribes, making it even harder to reach any compromise, not to mention consensus.

Deputy President, the argument put forward by the opposition on creating a select committee to do the job for the purpose of alleviating our time and efforts in this particular argument and in turn giving them time to do more good work for the community is groundless.

Now, it is time to prevent the debate from becoming destructive to the normal functioning of the legislature; it is also time to cast our votes for the Committee stage amendments and the Bill, rather than entertaining Ms Cyd HO's superfluous request for setting up a select committee to scrutinize the entire Bill from scratch all over again, which will only stall the proceedings of the Bill indefinitely.

With these remarks, I oppose Ms Cyd HO's motion.

**MR JAMES TO** (in Cantonese): Deputy President, when we heard of Ms Cyd HO's proposal of moving a motion under Rule 55(1)(a) of the Rules of Procedure to commit the Copyright (Amendment) Bill 2014 (the Bill) to a select committee, we likewise spent quite some time to explore the reasons, the purpose and the pros and cons. I have been serving this Council for more than 20 years and as

far as I can recall, there was never any case in which a Member still asked for the adoption of other procedures to handle a bill after it had been read the Second time.

Deputy President, first of all, according to normal procedures, once a motion on the Second Reading of a bill has been agreed to, the bill shall stand committed to a committee of the whole Council and shall then be put to vote. However, it must be admitted that the Bill now under discussion is marked by certain issues that are rather contentious and people have even put forward certain balancing measures or exceptions for this reason. These may need some more time for brewing. And, copyright owners may likewise need some more time to think about what kinds of up-to-date protections they mainly want. Besides, some advanced places which cherish creativity actually think that a very appropriate balance can still be struck even after their addition of legislative provisions similar to the ones now proposed by some Members. Hence, we need to give all sides some more time to grasp the proposed measures.

When some copyright owners first hear all these proposed measures, they may well think that not many countries have adopted these measures, and they may also think that even in these countries, these measures are adopted for the lack of any alternatives only. This explains why they see no room for any compromise. As a result, different Members simply put forward amendments which they think would strike the best or the most appropriate balance. Suppose these amendments were proposed before the Bills Committee completed the scrutiny of the Bill, the discussion on them would probably need to go on for a very long time.

By a very long time, I of course mean a reasonable time frame. If the deadlock is allowed to continue ... Some Members want to proceed to voting immediately, but I believe they themselves should know only too well that there are actually very serious controversies. Quite a number of Members are very cautious, thinking that the Bill should not be passed as it is currently drafted. They even think that failure to pass the Bill within the term of the current Legislative Council and the consequent necessity of beginning afresh are better than passing the Bill rashly in the midst of huge controversies in society at present.

This is of course a matter of judgment. Some Members fear that if the legislative process cannot be completed and the Bill thus lapses, it may be necessary to re-introduce the Bill in the term of the next Legislative Council for

the First, Second and Third Readings, and a bills committee has to be formed to study the Bill afresh. But have we ever wondered what the advantage will be if the motion moved by Ms Cyd HO is passed? What will be the advantage if the Bill is thus put aside and committed to a select committee for a serious, focused and cubic study on the three proposed amendments, with a view to ascertaining their acceptability or otherwise?

The advantage is a possibility. Both sides or all sides may first positively consider the reasonableness or otherwise of the three proposed amendments, or they may even seek to explore more thoroughly whether the three proposed amendments should still be excluded from the Bill despite the fact that in some other jurisdictions, even with similar legislative provisions, a proper balance can still be struck. In fact, many organizations and members of the public think that the proposed amendment regarding fair use, for example, will be a relatively reasonable arrangement that can strike an appropriate balance should it be implemented.

A select committee may take a very long time to conduct a focused study on the three proposed amendments, but it may also take just a very short time. The progress may likewise be either fast or slow. But most importantly, the passage of Ms Cyd HO's motion will mean that all sides are ready to sit down for negotiation. When Council proceedings are caught in a deadlock and the Bills Committee can no longer hold any more regular meetings, this can be considered as the third avenue, through which all sides may explore the feasibility of the proposed measures in a constructive manner.

I must of course admit that Member will surely think differently if they are of the view that they can have enough voting support and can therefore refuse to make any concession. But they should still consider very carefully the kinds of benefits that will ensue if all of us can discuss these several proposed exceptions or amendments in a formal discussion forum of the Council. I think the first benefit is that this can rebuild the channel of continued discussions among all sides.

For example, regarding the present debate on whether the issues concerned should be committed to a select committee, is it really impossible to hold the discussions outside Council meetings? Members of the pro-establishment camp tell me that we should not set up another committee since this will require even a

longer time. However, do you really think there are no discussions outside Council meetings now? There are many such discussions, and they are all held behind closed doors. People have been setting up meetings among themselves and the number of participants at each meeting varies. We understand that these issues do affect the rights and interests of many people. Besides, people simply keep changing the viewpoints they express in public. For example, in the case of new copyright interests, how will copyright owners exercise their rights or follow up copyright infringement cases? This is also a very important issue. If express provisions are drawn up on certain rights, such as the proposed communication right, allowing copyright owners to exercise such rights to the extreme, the entire society will understandably be alarmed, and this will certainly arouse grave public concern.

One example is the uploading of a singing performance of the Chief Executive to Facebook. This case essentially involves the video-recording of a singing performance done with background music in a certain event. The uploading of such stuffs is now as natural as breathing. But the proposed requirements will plunge people into worries and concerns about being held liable for breaching the law. Admittedly, under normal circumstances, the amount of royalty that can be recovered will not be substantial. In the Chief Executive's case, for example, it was said that only \$600 was paid. However, if the person involved is not the Chief Executive but Mr Charles Peter MOK, whom I saw just now, and if the copyright owner happens to be a person who hates Mr MOK, and whose political opinions and political background are completely different from those of Mr MOK, the issue will not be as simple as the payment of merely \$600.

The possession of the right may easily lead to indiscriminate complaints. Admittedly, such complaints may not necessarily be entertained by the Customs and Excise Department. But we must also note the trend that in society nowadays, more and more people want to exercise their rights to the extreme. Such people are actually found on both sides, one example being the "Fifty Cent Party". The instigation of any incident will certainly be followed by a commotion and in that case, even if the company involved does not want to take any actions, it will still come under some degree of social pressure because some people will criticize it for harbouring the copyright infringer. Hence, with the possession of the right, the companies involved may find it hard to be lenient even if they want to so. There was one incident in Taiwan recently. The mere act of holding the national flag of the Republic of China already caused

complaints or reports, leading to commotion among netizens. As shown by a survey, this caused several hundred thousand people to cast their votes in the general election, thus making an impact on the election outcome.

Deputy President, we therefore think that when scrutinizing the Bill, we must not perceive it as purely involving a bunch of controversies over the handling of civil claims in respect of commercial operation, the reason being that we are now living in a knowledge-based society where copyright claims may arise from lots of other things. Last time, I already talked about one example, but some Members were not present at that time. The case is about the song "Happy Birthday To You"; the Warner Music Group (WMG) of the United States has also laid claim on the copyright of this song and it is now pursuing an appeal after losing its case under the procedure of first instance. Could we ever imagine that singing "Happy Birthday To You" and uploading the performance to Facebook, an act that we thought would not constitute any copyright infringement, may in fact lead to copyright infringement accusations and even prolonged litigation? Maybe — who knows — when we sing an old folk song in the future, a certain company may suddenly lay claim on the copyright of the song and report our act to the authorities. It may be an American company, a Mainland company, or even a company which has never done any business before.

Therefore, we should look at this issue with a more constructive attitude, right? Of course, there is no need to say anything more if Members are downright negative in attitude from the very beginning, thinking that anyone who opposes the immediate conduct of voting on the Bill must have an attitude problem. However, as I understand from certain Members, copyright owners are actually doing serious studies on the three proposed exceptions; legal advisors and experts have been engaged to explore if these exceptions are totally unacceptable. Some people have also asked, "Will there be any room for negotiating the acceptance of one or two of the proposed exceptions in case the three of them cannot be accepted in their entirety?" The message I have received from indirect sources and certain Members is that some people are really considering these proposed exceptions very seriously, and they have even started to look at the detailed contents of the proposals.

But the point is that people simply should not discuss these issues behind closed doors and then emerge suddenly to announce that they will accept this or that proposal. In case a select committee cannot be established but some

copyright owners, the Government and pro-establishment Members can still bring forth the happy ending of having at least one of the proposed exceptions accepted, we may of course have the Bill passed first. However, we should bear in mind that there are still requests for a reform in society in order to keep abreast of the latest trend. Hence, a review should be conducted on an ongoing basis but the Bill may at least be passed first if the Government agrees to accept one of the proposed exceptions (*The buzzer sounded*) ...

**DEPUTY PRESIDENT** (in Cantonese): Mr TO, please stop speaking and sit down.

**MR CHARLES PETER MOK** (in Cantonese): Deputy President, the Copyright (Amendment) Bill 2014 (the Bill) now under scrutiny has been my great concern since the very time before my joining the Legislative Council. I have always hoped that the Bill enacted by Members can strike a balance that gives equal attention to all stakeholders. By stakeholders, I of course mean copyright owners, and copyright owners in turn include creators. Furthermore, Internet service providers, netizens and the public are all stakeholders too. The striking of a balance necessarily requires the making of concessions, meaning that no one single side can have all it wants and no one will be completely satisfied. But the essential requirement is the making of concessions. Though all sides have their respective bottom lines, they must still negotiate with one another.

Speaking of striking a balance, we must of course consider many other factors. As the Bill is already tabled for discussion and passage in the Legislative Council ...

**MR GARY FAN** (in Cantonese): Deputy President, I request a headcount.

**DEPUTY PRESIDENT** (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

**DEPUTY PRESIDENT** (in Cantonese): Mr Charles Peter MOK, please continue with your speech.

**MR CHARLES PETER MOK** (in Cantonese): Deputy President, I have mentioned my hope of enacting a bill that can balance the interests of all sides. We must of course consider many factors before passing a certain bill in the Legislative Council, including time, the legislative process, the agenda, the Rules of Procedure, and so on. Hence, there are actually three options before us. The first is of course the withdrawal of the Bill by the Government. As for the second and third options, last week ... I can remember that the President instructed us to focus on Ms Cyd HO's proposal during this debate session, that is, the proposal of establishing a select committee under Rule 55(1)(a) of the Rules of Procedure to deal with the Bill. Another option is to stick to our established practice of scrutinizing bills, that is, proceeding to Committee stage. Members all know that the President has divided the Committee stage amendments into five groups for discussion and the Bill will then go through Third Reading. This is in fact a forcible approach. Yet another option is of course Ms Cyd HO's motion on invoking Rule 55(1)(a) of the Rules of Procedure.

Actually, what we need to discuss is ... We must of course stick to the two things the President wants us to discuss, namely the two possible options of Committee stage amendments and a select committee. However, I believe that we must still explain why ... For instance, we must still explain whether the withdrawal of the Bill is a desirable solution. In fact, up to this moment, I still do not buy the idea of withdrawing the Bill. This is actually the most negative approach because everybody will end up empty-handed. Our situation is not yet so bad after all. Optimistically — from the perspective of pan-democratic Members, of course — we hope to see the passage of all the three amendments we put before the Legislative Council, or at least some of them if not all. Understandably, some will support the amendments and others will not. But if we really withdraw the Bill, both sides will be losers and all will end up empty-handed.

It is only understandable that in any debate on any topics, there are bound to be the two sides of "for" and "against", with each holding different opinions. But suppose we really refuse to make any concessions whatsoever but instead insist on stopping the other side from getting all the benefits and brushing aside



all its opinions ... What I mean is the total victory of one side and the total rejection of the other side's demands, such as our proposed amendments. This will be very unfair and what we are talking about will no longer be any compromise as such. The Government often asks us to make concessions, but what it really means is that we should yield totally to its proposals. If the Government really withdraws the Bill, its act will be like removing a plate of rice on the dining table which we intend to share equally through negotiations. If the Government withdraws the Bills, everybody will be a loser and literally end up empty-handed.

On this question, I have heard that even within the pro-establishment camp, views seem to be divided. However, I am not exactly sure about this because their views change very frequently. Sometimes, probably due to LEUNG Chun-ying's influence, they may alter their stances a bit. But last week at least, I did hear that views were divided not only within the pro-establishment camp but also in the Hong Kong Federation of Trade Unions as well. Mr WONG Kwok-kin said that the Bill could be withdrawn as there was no urgency. He explained that with the existing Copyright Ordinance, copyright would not lose all protection instantly, so delaying the amendment exercise might not be such a big deal after all. Honestly, I do not fully agree to such an argument. If his opinion is entirely correct, it will not be necessary to update and improve the Copyright Ordinance in the very first place. And, if an update is necessary, we should of course get it done as soon as possible. I consider it desirable to finish the updating of the Ordinance sooner rather than later, but I respect his view that the Bill can be withdrawn — I mean he believed so at that time, but I do not know if he still believes so today.

Mr WONG Kwok-hing's argument, on the other hand, is even more interesting. According to him, the Bill must not be withdrawn, otherwise we will do so every time, and if we always resort to certain tactics ... tactics that he dislikes ... every time we have any dissenting opinions ... In brief, if he does not like our position, he will demand us to yield. In fact, he has never discussed whether our proposed amendments are justified and desirable. Therefore, I think his argument is based totally on political considerations. It looks like he simply does not want us to score any goal, not even one single goal. He only wants us to raise the white flag of surrender. They will not be satisfied unless pan-democrats hoist the white flag of surrender. Obviously, their consideration is not based on the best interests of the people. If any Member dares to admit

this loudly in public ... I have a sore throat today, so I cannot ... Even when my throat is okay, I cannot speak as loudly as Mr WONG, so I can only say without raising my voice that his consideration does not put people's interests first. Rather, he has put political factors first. This is regrettable.

Let me return to the issue of establishing a select committee under Rule 55(1)(a) of the Rules of Procedure. Honestly, one reason for our proposal is the observation that the Government, especially Secretary Gregory SO, has neither devoted their full efforts nor discharged their duties. My guess is that he may find the setting up of a select committee totally unworthy of any consideration, so he does not want to stay here to listen to our speeches. I have no idea what he is busying himself with outside the Chamber, as pro-establishment Members are very co-operative now and all of them are present at the meeting. He does not need to send any text messages to Members or run around to ask them to attend the meeting. So, I do not know what he is doing outside. However, three weeks ago — three weeks ago if my calculation is not wrong — that is, one week before the delivery of the Policy Address, we noticed that there was actually an empty time slot of two weeks for the Government to create room for a dialogue and compromise. Yet it did not do so. Instead, the Secretary seemed to be caught by a sudden liking for the role of an ordinary secretary, and he only ran around to invite us to attend a meeting. But we all know that at a meeting like this, all attendants will only stick to and state their respective stances. It is good to hold such discussions, but we all know they will never bear any fruit. Moreover, it seems that individual Members or political parties and groupings in the pan-democratic camp were invited only once, and the Secretary has never done any follow-up. I only heard the Secretary state publicly after the meeting that the discussion was fine and there were exchanges of views, but no agreement was reached. In this way, he behaved as if he had already done his job.

However, we understand, and the Secretary should likewise realize, that at this stage of our discussion, we should focus on the three major amendments before us and find out which of them can be accepted. As already recounted by some Members, netizen groups have already extended an olive branch by agreeing to deal the easy first. This means that as a start, we may pick out and deal with the more easily acceptable ones among the three amendments. In this connection, I suppose the most easily acceptable and widely adopted doctrine found in the amendments must be the fair use doctrine, which has been adopted by the United States for several decades and also by certain Asian countries

including Singapore for quite some time. In Hong Kong, consultation on this doctrine has also been held on and off for quite some time, so one cannot say that there has never been any consultation. The only thing is that the Government does not buy this doctrine. Even the amendment concerning user-generated content (UGC), which is similar in nature, can also be acceptable. However, the Government has never made any active attempts to persuade copyright owners.

I can well appreciate the stance of copyright owners. There is nothing wrong with their stance because the matter involves some very substantial interests from their perspective. However, in the course of negotiation, it is inadvisable to stick only to this stance and then proceed to quote a sky-high asking price to elicit a counter offer by the other side. One may quote a sky-high asking price but after this, one must passively await a counter offer by the other side, because no deal will be possible without a counter offer. However, has anyone ever put forward any proposal that can balance the asking price and the counter offer?

Even if we want reconciliation, we still need a mediator. But the Secretary does not want to act as one. Instead, he is only willing to ask people to attend meetings. He is just a messenger, not a mediator. In the absence of any mediator to facilitate a compromise, and when all sides care only about their own interests (or their most important interests), how can it be possible for any one side to suddenly accept the proposal of the other side? Therefore, I can well appreciate why copyright owners do not want to do so. The Secretary should determine the extent of a possible compromise and work out a balanced proposal. Following this, he should ask if the two sides can accept the compromise. However, he has not done so.

Furthermore, I find the Government's approach to the matter very unusual. Regarding its handling of bills in the past, did it ever listen only to one side and totally neglect the other side when setting the policy directions and positions of the bills concerned? Regarding this copyright bill, there is the Hong Kong Copyright Alliance. But when it comes to universal retirement protection, there is also an alliance fighting for universal retirement protection. Will the Government listen only to the opinions of the Alliance for Universal Pension and then refuse to make any concession? The Government certainly will not listen to any alliances formed by common people. But it will heed all the advice from alliances of the business sector. When the Government introduced the "harsh measures", two Secretaries, namely Secretary Prof K C CHAN and Secretary

Prof Anthony CHEUNG, were tasked with handling the two related pieces of legislation. There was likewise fierce opposition from the alliance of the real estate sector. But the Government pressed ahead all the same. It simply struck a balance and said that was it. Then, it proceeded to ask if the package was acceptable.

However, it is strange that the approach of the Government this time is very different. I do not know whether this is due to the political reason that this session is the last one in the term of the current Legislative Council, nor do I know whether this is due to the new approach adopted by the new Secretary. Admittedly, even if the Government introduces a balanced proposal which, for example, accepts one or two of the three amendments proposed by us, both sides would still not be completely satisfied. But the point is that in that case, the Government can at least have a basis to lobby Members on both sides. As I have already said, if each side now takes a forward step of concession, the political pressure will surely be shifted to them. But I find this only fair. What I mean is that netizens will then criticize pan-democratic Members for failing to achieve all the results they want. Similarly, the sector will also criticize pro-establishment Members in the same way because the sector was originally determined not to make any concession. But I must say that in this way, the matter can be resolved. This is how all matters on earth are settled. Why should this matter be an exception?

But the Government has instead sought to shift the focus of public attention to filibuster and various political accusations. I honestly think that by doing so, the Government and the Secretary simply fail to discharge their duties. Worse still, the Government often criticizes Members, saying that people do not want them to do so. Yet I must say that the people also demand the Government and the Secretary not to seek the forcible passage of the Bill. Therefore, Deputy President, we all hope that the Government can refrain from using the established procedure of Committee stage to bulldoze the Bill through.

It is because everyone can see that the Bill will definitely be passed in the end given the full co-operation of pro-establishment Members. However, does this mean that all problems can be solved? Will people thus give up their aspiration? On the other hand, if we set up a select committee as proposed by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure, there will be a way out. The reason is that all Members should have been members of such select committees before, and they should know that Members on both sides will act

responsibly in such committees, participating in negotiations and seeking a compromise. Moreover, everyone wants to pass the Bill within this year. Hence, both sides will not give up the hope of passing the Bill, and they will try to avoid any undesirable outcomes, such as the need to put forward the original Bill intact after the negotiations. It is for this reason that we have come up with this idea to help the Government, or even the President, to achieve the best result. It can even be said that we are giving a hand to the Government and the President in ending the filibuster. This is the best approach (*The buzzer sounded*), one that can benefit everyone.

**DEPUTY PRESIDENT** (in Cantonese): Mr MOK, please stop speaking.

**MR CHEUNG KWOK-CHE** (in Cantonese): Deputy President, Ms Cyd HO has moved a motion under Rule 55(1)(a) of the Rules of Procedure (RoP) for appointing a select committee to deal with the controversial issues in the Copyright (Amendment) Bill 2014 (the Bill), with a view to allowing more thorough consideration of the views from all sides, releasing Council meeting time to deal with the bills pending Second Reading and creating room for the moving, debating and passage of the forthcoming Budget. Hence, I give my full support to it.

Deputy President, I regret to say that the feedback from Secretary Gregory SO is very disappointing. The Secretary has been expressing disappointment both inside and outside the Chamber, saying that Ms Cyd HO's invocation of Rule 55(1)(a) is no different from an adjournment motion, and that her proposal to set up a select committee is essentially a filibuster tactic. The Secretary's response is truly very regrettable. In fact, the invocation of Rule 55(1)(a) is very different from an adjournment motion. Under an adjournment motion, this Council must wait for the Government's decision after the debate is adjourned, and the Government may or may not submit the Bill to the Council once again. The decision is in the hands of the Government. In contrast, the establishment of a select committee can enable the Council to decide or even lead the way of handling the conflicts in various aspects. The legislative timetable can also dovetail with the agenda of the Legislative Council meetings. The latter is therefore the best arrangement. On the Secretary's comment that Ms HO's proposal on establishing a select committee is essentially a filibuster tactic, I

believe that all actually depends on the Government's sincerity or otherwise to resolve the problem. All actually depends on whether the Government attaches any importance to the overall executive-legislature relationship, and whether it is bent on ignoring public opinions. If the Government takes Ms HO's proposal seriously, there will be an avenue to collate the views and arguments of all sides. It will no longer be necessary to bring all the conflicts to Legislative Council meetings for debate, thus avoiding any further wastage of time. Therefore, the stance of the Government is very important. Of course, if the Government decides not to support the establishment of a select committee, the motion will definitely become a subject of filibuster. In a way, it is all up to the Government to choose between heaven and hell. The public will surely observe how the Government treats Ms Cyd HO's motion.

Deputy President, I support Ms HO's invocation of Rule 55(1)(a) for establishing a select committee to deal with the conflicts and controversies arising from the Bill. Earlier, a representative from the copyright sector, Mr Ricky FUNG, commented that the Bill was not a political issue, and that Ms Cyd HO's proposal to establish a select committee was just a stalling tactic. Of course, as a representative of the copyright sector, he naturally wants to see the passage of the Bill as soon as possible. At the same time, they also think that the Bill involves only the copyright sector. However, it must be noted that this Bill affects not only the copyright sector but also how the public are to use the Internet. This Council must listen to and respect the opinions of all sides; the establishment of a select committee is not a delaying tactic but an inevitable path for democracy is at work and a move which is of immense significance to the in-depth examination of this Bill.

In fact, the evolution of the Bill shows that technological development in different time periods will give rise to different social needs which naturally necessitate the adoption of different deliberation approaches. On 24 June 1997, the then Legislative Council passed the Copyright Ordinance. More than a decade has since passed and it is indisputable that both the means of communication and the forms of copyrighted works have undergone continuous changes. Hence, the law in question has amended thrice: the Copyright (Suspension of Amendments) Bill 2001, the Copyright (Amendment) Bill 2001 and the Copyright (Amendment) Bill 2006 were passed by this Council in 2001, 2003 and 2007 respectively. However, during the discussion on the Copyright (Amendment) Bill 2011, the public observed that the definitions of "parody" and

"more than trivial economic prejudice" were vague. Since then, the social response to the legislative proposal concerned has been mounting, eventually culminating in the strong backlash this time.

The cause of all the serious conflicts arising from the amendments proposed by the Bill this time is rooted in netizens' worry that their use of copyright works may contravene the legislation or even the new communication offence and thus make them liable to criminal prosecution. On the part of copyright traders, they want to gain the communication right by means of this Bill, so that they can increase their income. Amidst all these circumstances, the Government has, however, decided not accept the amendments moved by pan-democratic Members with the aim of balancing the interests of the public and those of copyright owners. It only wants to pass the Bill as an exhibition of its governing authority. Ms Cyd HO's proposal to establish a select committee on the Bill is meant precisely to break the present deadlock and enable all sides to conduct a more in-depth and thorough study on the Bill before it is put before this Council for scrutiny again.

Deputy President, the reason why we want to replace a Committee of the whole Council by a select committee for discussing the Bill is that there is actually a need to summon the persons concerned, including copyright traders, copyright owners, creators, netizen representatives and copyright scholars, to give their views on the legal technicalities of the Bill and to conduct an in-depth and thorough study on the content of the Bill together with public officers and Members in a select committee with legal power. I cannot understand why Mr WONG Kwok-hing should criticize Ms Cyd HO that her proposal to resolve this urgent issue is just a crafty stratagem. The request for serious discussions on legal technicalities and the proposed amendments are all meant to answer public opinions, but the Member concerned is dismissed as a crafty chameleon egged on by threats. Such remarks are downright impertinent. I maintain that the establishment of a select committee is a responsible suggestion and approach.

The Bill involves many legal technicalities. It is true that pan-democratic Members have by now gained a certain understanding of these legal technicalities. But much of the discussion is still focusing on matters of principles, that is on the question of justice. Of course, justice is extremely important and can also be discussed in a Committee of the whole Council. However, the public concern about the Bill at this moment is not the principle of justice *per se* but the many grey areas in the legal technicalities. As the devil is

in the details, it is advisable to put things in the proper order again. Instead of "passage first, review later", we should ask for "thorough discussion and study on the provisions before subsequent scrutiny and passage". To do so, we must clearly examine each and every detail in the Bill and all the amendments, in length and in depth. In that case, we must look at the Bill itself again and study its legal technicalities. Therefore, it is absolutely necessary to establish a select committee to discuss the legal technicalities in the Bill and to propose amendments correspondingly. The select committee will require the participation of as many Members as possible, so that the greatest possible consensus can be forged to handle the Bill.

This Bill has led to immense reverberation in society. Various stakeholders have been expressing their views again and again. Some of these views did not draw much attention in previous consultation and some were not even voiced in any previous hearings. Though pan-democratic Members have attempted to balance the interests of all sides and move three groups of amendments to introduce the "fair use doctrine", "user-generated content exception" and "restriction on private contracts overriding legal exceptions", the demands of the public still cannot be fully met. The concerns put forward by netizens cannot be dealt with in the meetings of this Council. Even more regrettably, a political party has indicated its opposition to the pan-democrats' amendments. As for the rest of the pro-establishment camp and the Government, they have not yet provided any positive response to the amendments and the Hong Kong Copyright Alliance has even categorically rejected these amendments. If a select committee is established, all these people can be summoned to share their views on how best to protect netizens and how best to balance the interests of creators and copyright traders. A select committee can also move amendments agreed by various sides and pressurize the Government to accept them, with a view to enhancing the protection for freedom of creative activities, speech and expression in the cyber world.

The Government's position on this Bill is obviously slanting towards the protection of copyright traders. It has kept emphasizing the considerations of the Hong Kong Copyright Alliance, the International Federation of the Phonographic Industry, the Federation of Hong Kong Industries and the Hong Kong General Chamber of Commerce. The public can thus easily see that copyright traders will reap the biggest benefit after the passage of the Bill but the rights of creators and netizens will be overlooked. Pan-democrats got 1 019 000 votes in the direct elections of Hong Kong in 2012. They clearly represent the



majority public opinion but they are made the "minority" in the Council because of its undemocratic composition. They are therefore forced to adopt filibuster as a means of protest, in order to protect the rights of the people and urge the Government to respond public opinions. Currently, not all the seats in the Legislative Council are returned by direct elections, and some of them are returned by functional constituencies which are slanted towards the Government. As result, Members who represent the majority opinion are reduced to the minority in the Council.

Worse still, with the support provided by the royalists, the Government is certain of the passage of the legislative proposals and therefore does not want to pay any heed to pan-democrats' views and amendments. Deputy President, it is this kind of hostility to public opinions and uncompromising attitude that has plunged this Council into the current filibuster impasse. I believe that filibuster will only drag on under such a hostile atmosphere. If the Government really wants to make use of this amendment exercise to promote the development of creative industries and positively deal with the conflicts among different stakeholders, and if it is really willing to weigh the pros and cons of the Bill and act as an arbiter of disputes to minimize differences rather than serving as a mere co-ordinator, the Secretary should support the establishment of a select committee. Consensus can certainly be built when there is a will. I advise Members from the pro-establishment camp not to forgo the present chance of forging consensus.

Heaps of bills are now awaiting scrutiny by the Legislative Council and many of them are related to livelihood issues. If the Bill, which is still controversial at the moment, can be committed to a select committee for discussion, the time of this Council can be spent on handling other bills. Otherwise, with the impact of filibuster on the legislative progress, I am afraid we will be unable to finish scrutinizing the Bill in the next couple of meetings, and this will delay other bills and even check the passage of the forthcoming Supplementary Appropriation Bill. In that case, people's livelihood will be adversely affected and on top of that, the Government's operation might also be paralysed. We of course are concerned about the livelihood of 1.4 million construction workers, but the crux of the issue is exactly how the Government is going to handle this problematic Copyright Ordinance. If a select committee can be established to let Members have an alternative venue for discussion, we can save the operation of the Council and of the Government from any mishap. Why don't we go for this option?

Deputy President, I believe that the best approach must be the committal of the many controversies arising from the Bill to a select committee in which we can carry on the discussions, listen to the views of various stakeholders and join hands to make legally binding amendments. On the one hand, the Bill can thus give way to other important bills and the Appropriation Bill, offering a solution to the congestion of agenda items in Legislative Council meetings. On the other hand, in a select committee, we can reach a consensus after listening more to people's opinions. "Let's talk. Let's listen ..." (*The buzzer sounded*)

**DEPUTY PRESIDENT** (in Cantonese): Mr CHEUNG, please stop speaking.

**MS EMILY LAU** (in Cantonese): Deputy President, I speak in support of Ms Cyd HO's motion on committing the Copyright (Amendment) Bill 2014 (the Bill) to a select committee for consideration under Rule 55(1)(a) of the Rules of Procedure.

Deputy President, you are now presiding over the meeting because the President has something else to do, because the President has to meet with different Members and the Chief Secretary for Administration at different times today. I do hope that the executive authorities can respect the independence and autonomy of the Legislative Council and refrain from doing anything which makes Members and the public think that it is pressurizing the Legislative Council. I believe Chief Secretary Carrie LAM does not want to do so either. Deputy President, when we met with the President just now, I asked him whether the Chief Secretary had pressurized him. I said that if she had, the consequence would be very serious. The President of the Legislative Council and other people are all very concerned about the use of Council business time. We can understand their concern.

This is especially the case with The Hong Kong Institute of Education. Yesterday, it was so delighted to hear that it would be granted university status, and its President, Prof Stephen LEUNG, hastened to ask for Members' "mercy" because the relevant bill must be submitted to the Legislative Council for scrutiny. He expressed the hope that the relevant procedure could be completed before the term of the present Legislative Council came to an end. I also heard the teaching staff and students of The Hong Kong Institution of Education say in an interview that they eagerly looked forward to the award university title. The

matter will of course be handled by a bills committee to be established. But whether the bill concerned will be added to the 18, 19 or 20 bills pending scrutiny is yet to be decided. Besides, various public officers have also told us that they also have bills on the waiting line. We can appreciate their worry.

Deputy President, we have spent many hours on scrutinizing the Bill because it has given rise to many clashes and conflicts. That is why Ms Cyd HO has proposed to commit the Bill to a select committee for consideration. I think this is not a bad idea. I do not prefer delaying the Bill to the next Legislative Council or the next next Legislative Council. I support committing the Bill to a select committee for working a compromise. As Mr Charles Peter MOK just said, we should let copyright owners and the public join hands to reach a compromise. Although there may not be unanimous agreement, there will at least be a compromise. Deputy President, you should know best because you are a businessman. You often say that businessmen will somehow manage to find a proposal acceptable to all, and things will then proceed smoothly.

In the debate last week, while I was not in the Chamber, Ms Starry LEE queried that the issues I mentioned had already been discussed in the Bills Committee. Deputy President, the Bills Committee might have discussed those issues, but the discussion did not yield any outcome. Discussing the Bill in the Bills Committee does not necessarily mean that the job is done and the Bill is tackled. If the discussion could yield a consensus at that time, things would not have ended up like this now. So, I hope Ms Starry LEE or the Democratic Alliance for the Betterment and Progress of Hong Kong can try to understand that we all want the Bill passed, we all agree that the existing Copyright Ordinance and our system are out-dated and they should keep pace with society. Deputy President, precisely because some netizens or members of the public think that their rights and interests are not protected and the Bill proposed by the authorities is completely biased towards the business sector, we ask for a position or a way out for all. So, if a select committee is helpful in forging a consensus, it would be great.

If a select committee is not to be established, Secretary Gregory SO can actually be asked to do the job. I can understand why Mr Charles Peter MOK often says that Secretary SO has been doing any work at all. He just should not busy himself with setting up meetings for us like a secretary. I do not need him to arrange any meetings with anyone. Instead, he should have met with different

sides and then put forth a proposal on behalf of the Government, a proposal that is agreeable to both the pro-establishment and pan-democratic camps. It is because when all sides can see a balance, the rights and interests of copyright owners can be protected and netizens' creations can also be protected against the risk of prosecution (though no one is asking for legislation to protect copyright infringement).

Hence, some have asked the question of whether it is possible to come up with an exception which can assure us that people will not be prosecuted for engaging in non-profit making creations. How can such an assurance possibly harm the interests of copyright owners, may I ask? Such an assurance may not necessarily win the applause of all, but at least it can show that the authorities have tried to respond to worries in society. That is why some people think that if the Secretary does not perform his duties, even the establishment of a select committee will not be of any use. This may be true, but the Legislative Council must still impart to the authorities the message that time is running out and this matter must be settled as soon as feasible.

As the President of the Legislative Council said earlier, we need to debate why the Bill should be committed to a select committee and why it should be considered in Legislative Council meetings. According to the President, if the Bill is to be considered in a select committee, all discussions must then be held in the select committee, and the Bill should be re-submitted to the Legislative Council after the select committee has made its decision. In that case, no more issues need to be debated here. I agree with him. If this approach is opted, we can clear the road for the 10 to 20 pending bills pending, including the one on awarding a university title to The Hong Kong Institute of Education. We will have time to consider all those bills. Why don't we do so?

Deputy President, just now, I saw how the Chief Secretary for Administration chided various people when briefing the media after her meeting with the President of the Legislative Council. Recently, she is fond of chiding people. She warned Members that they should not overuse their power. I just do not think that she should be referring to us. We do not have any power. Deputy President, what power do we have? She even named Ms Cyd HO for criticism. I do not think it is good to do so because as the Chief Secretary for Administration ... What Ms Cyd HO has done is in compliance with the Rules of Procedure and approved by the President of the Legislative Council. We were

all there at that time. Why did the Chief Secretary do so? She also said that we were putting up delay. But we are only doing something permitted by the Rules of Procedure ...

**DEPUTY PRESIDENT** (in Cantonese): Ms LAU, you have digressed from the subject.

**MS EMILY LAU** (in Cantonese): ...We are only doing something permitted by the Rules of Procedure. This has nothing to do with any power as such. This is only something we are permitted to do as a Member.

Deputy President, we met with a delegation from the United Kingdom Parliament yesterday. Almost all the Legislative Council Members present were from the pan-democratic camp, and there was only one pro-establishment Member, Mr CHUNG Kwok-pan. He is very courageous in a way. Members from the delegation asked why we had made the Legislative Council make so many quorum calls. We explained to them that ... Mr CHUNG certainly found all those meetings very tiring, for he said the 35 of them had to sit in the Chamber all the time to maintain a quorum. He said that they racked their brains and did not know what to do. Members of the delegation understandably sympathized with him at first, thinking that it was outrageous. We then explained to them the methods for returning Members and the make-up of the Legislative Council. We told them that we were entirely powerless and all that we could do was to propose motions under the Rules of Procedure. We told them that some people might not approve of our actions because such actions might become a means to check others. We also told the members from the delegation that since voting ...

**DEPUTY PRESIDENT** (in Cantonese): Ms LAU, I remind you once again that you have digressed from the subject.

**MS EMILY LAU** (in Cantonese): Deputy President, I am explaining why we want to establish a select committee: we hope that a select committee can sort out certain matters. We are not like those people who know they have enough

votes, and who thus want to proceed to voting immediately and then call it a day. But while there are such people, there are also people who say that they do not want to proceed to voting immediately. Hence, we end up in the present deadlock.

Hence, we hope that Chief Secretary for Administration Carrie LAM ... Since she likes chiding people so much, would she please reprimand the Secretary? Would she please tell him to hold discussion with copyright traders and various stakeholders, and see if he can work out a proposal acceptable to them all? In fact, we all want to have the Bill passed, and we all hope that there can a chance of timely discussions for the many bills waiting for their turns of scrutiny by the Legislative Council, including the upcoming Budget and the motion on seeking funds on account

So, if Members also think that this is a way out, please support the motion on committing the Bill to a select committee for consideration. However, we must also request the select committee to start holding its meetings as soon as possible. Based on past experience of establishing a select committee, we know that the membership, including the chairmanship and deputy-chairmanship, would be taken mostly by pro-establishment and royalist Members. They will grab almost all the places, leaving just a few places for democratic Members. Nevertheless, we can still work hard together and quickly come up with a proposal for re-submission to the Legislative Council, in the hope that the proposal can win the support of majority Members and the public. We hold that this is a good approach. If not, do we want to continue having meetings like this? Do we want to continue scrutinizing hundreds, I don't know exactly how many, of amendments?

So, Deputy President, I do not think Ms Cyd HO should be chided by the Chief Secretary because of her proposal. She has put forward the proposal on behalf of the public, so that this Council can proceed to tackle other matters while members of the select committee can handle the Bill. I truly believe and sincerely hope that the business sector and the public can understand each other's concerns and together they can come up with amendments agreeable to them both, so as to give each other a way out. I believe many people do not wish to see the present deadlock. No one wants to be kept here all the time, with only a 13-minute break every hour. We are not prisoners, are we? How come this Council has been plunged into the present state? It is because we have not

discussed certain issues thoroughly and we have not reached a compromise between the two sides. That is why when we told the delegation from the United Kingdom Parliament our reason, they immediately understood.

Hence, Deputy President, it is very good that Ms HO has moved this motion. Do not listen to other people's criticism about her. I hold that this Council should find its own solution. We do not need the executive authorities to put pressure on Members or the President. We should demonstrate our ability to find our own way of tackling critical issues and sharp conflicts in society. We together can reach a compromise, or a solution, which will convince copyright owners, netizens and the public that the Legislative Council is wise enough to pause at a critical juncture and seek a solution, rather than wasting time every day. I do know that we still have 10 to 20 bills pending scrutiny and there are more to come. I myself also hope that there can be time to scrutinize them. We do not wish to see that by the time certain Members leave office in July, the public all criticize us for the work yet to be completed or started. I believe no one wishes to see this happen.

(THE PRESIDENT resumed the Chair)

Therefore, given that the two sides have so many things in common and no one is strongly against the passage of the Bill except that some minor details are worth re-consideration to ease public worries ... They are not asking for copyright infringement. No one says that they want to infringe on the business interests of copyright owners, and no one says that they want to introduce legislation to allow them to do so. I can also understand the worries of copyright owners.

Hence, the more we say the more we find the many things we have in common. If we can establish a select committee and invite the two sides to sit down and discuss, I believe the work can be completed in one month the soonest and the Bill can be re-submitted to the Legislative Council. Meanwhile, we can spare the time to tackle the backlog of work. Why don't we consider this proposal? This proposal can also give a stronger impetus to Secretary Gregory SO as he seems to be so indolent now. As some people have pointed out, it is because he already knows that he has sufficient votes and he thus does not think

that he still needs to work. However, if we tell him that we want him to do a better job, or if we all can request him ... or if not all, then if more of us can make this request to him, he will feel the pressure.

Hence, I hope Members will not just focus on criticizing us, saying that we are wasting Council business time. I hope Members can exercise their influence and do real work for Hong Kong and the copyright industry. I wish to reiterate that we want to have this done, but we need to find a position acceptable to all. Hence, I hope Members can send a message to the executive authorities that they need not approach the President of the Legislative Council again. All they need to do is to do some real work and work out a compromise agreeable to all, so that the Bill can be passed and more time will be available for us to consider other bills.

I so submit and support the motion.

**MR ALAN LEONG** (in Cantonese): President, I rise to speak in support of the motion moved by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure to commit the Bill to a select committee for continued discussions and handling immediately after Second Reading.

President, there is definitely a reason why this procedure has never been adopted since the reunification. Under the established practice, after the presentation of a bill by the relevant Secretary to the Council for First Reading and Second Reading, the President will announce the referral of the bill to the House Committee for considering whether a bills committee should be formed. Actually, this is a delegation of task by the committee of the whole Council. If the House Committee decides that a bills committee shall be formed, the latter shall be deemed to have the authorization of the committee of the whole Council to discuss the underlying policy of the bill and to examine it clause by clause before returning it to the Council. After the bill has gone through Second Reading, the President will announce that the Council goes into the Committee. Actually, we need not go through this procedure once again now because the relevant Bills Committee has already been so authorized and completed the task. But it is different this time because the Bills Committee ...



**MR GARY FAN** (in Cantonese): President, I notice that pro-establishment Members are leaving the Chamber *en masse*. For that reason I request a headcount.

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

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

**PRESIDENT** (in Cantonese): Mr Alan LEONG, please continue with your speech.

**MR ALAN LEONG** (in Cantonese): President, just now I was elaborating why Rule 55(1)(a) of the Rules of Procedure is rarely invoked under normal circumstances. But this time, the legislative process of the Copyright (Amendment) Bill 2014 (the Bill) is very special and unusual. This accentuates the importance of Rule 55(1)(a), and it has thus come to be regarded as the best means of resolving the present deadlock.

Since the Bills Committee tabled its report to the Council, some significant developments and new information not covered by the report have come into the picture. Although I was not a member of the Bills Committee, I have read the report tabled to the Council. I am sure that all these issues were never discussed by the Bills Committee, nor were they aptly considered or dealt with at that very stage. Therefore, under this very unusual situation, I will support the invocation of Rule 55(1)(a) to deal with the present deadlock. Members may regard our proposed invocation of Rule 55(1)(a) as an attempt to "revive" the Bills Committee. But of course, this is not exactly a complete "revival". As the Bill has gone through Second Reading, the relevant legislative process must go on, and we must complete the legislation on this public policy. In theory, we can decide not to further consider a bill at the bills committee stage. But this aside, Ms HO's proposal is a very suitable procedure for handling the Bill given all the latest developments.

President, I have mentioned that some major developments relating to the issue have cropped up. Let me now briefly talk about one or two of the more significant ones. For instance, during the Second Reading stage of the Bill, I had the opportunity to meet with the representatives of Hong Kong Copyright Alliance (the Alliance) for the first time, and the meeting lasted two hours. From my discussion with the Alliance, media reports on its meetings with other Members and my exchanges with other Members, I have come realize that the focus of copyright owners is actually not those people who use copyright works for non-commercial or secondary creation purposes. Their focus is in fact the collection of royalties from intermediary platforms. Yet, I cannot see this focus in the report of the Bills Committee. Is that because the Alliance never mentioned this in the whole process? Or, is that because the Bills Committee somehow failed to get the message despite being told by the Alliance? I really do not know. Anyway, if their focus is the collection of royalties from intermediary platforms, they should not victimize other people.

President, one focus of democratic Members is to introduce the fair use doctrine as an exception, so as to remove the knife hanging over those online platforms for opinion expression and secondary creation. In fact, copyright owners may not really mind the introduction of this doctrine, as their focus is to collect royalties from intermediary platforms. Another point which the Bills Committee did not look into, I am sure, is the moratorium on lawsuits proposed by Prof Peter K YU. As mentioned by Members earlier, the moratorium aims to ensure those who use copyright works for non-commercial purposes will definitely not liable to any criminal or civil proceedings. These two points were not properly addressed in the Bills Committee. I cannot see any in-depth discussion on these in the report, not to mention anything like a debate.

In addition, we frequently hear Secretary Gregory SO say that the three exceptions proposed by democratic Members (including the fair use doctrine) have not undergone any thorough consultation. If he really thinks that there was inadequate consultation on these exceptions during the bills committee stage or before the introduction of the Bill, then he must realize that Rule 55(1)(a) can actually provide a golden opportunity for consultation. If we directly enter the Committee stage now, it will be impossible for us handle issues such as how the Bill should be drafted, how copyright owners can be best protected and how a balance of interests can be struck for copyright owners and netizens who use online platforms for secondary creation.

President, as Members are aware, if we enter the Committee stage now, we can only amend the wording of the relevant provisions during the clause-by-clause examination of the Bill, but we will not be able to discuss the moratorium on lawsuits proposed by Prof Peter K YU or focus on the original intent of copyright owners to impose charges on intermediary platforms rather than individuals engaged in secondary creation. It will be impossible for us to deal with these issues after entering the Committee stage. Hence, in the light the latest developments relating to the Bill, I think there is a point to invoke Rule 55(1)(a).

President, I do not think the Government can give any reasons for not supporting the invocation of Rule 55(1)(a). Must the authorities bring the legislative process so swiftly to the stage of voting and secure the passage of the Bill with all the votes in its hands? In my view, we should not handle things in such an irresponsible manner. Moreover, some remarks made by the Chief Secretary for Administration recently are rather outrageous.

President, she has recently remarked that since Legislative Council Members are each paid \$93,000 a month plus a gratuity of \$600,000, they should attend Council meetings and scrutinize bills. Actually, she implies that Members should pass the Bill. But does she realize that as the representatives of all walks of life and their various interests, Legislative Council Members are also duty-bound to bar the passage of some unjust and unfair bills? This is one of the duties that Members are paid to discharge. I just cannot help asking one question, "The Chief Secretary for Administration is paid over \$300,000 a month, more than triple the monthly salary of Members. Is she also duty-bound to lobby the various stakeholders?" Nonetheless, the Chief Secretary has only said that she is completely ignorant of the Bill and has no idea what the Bill is about. If she is ignorant of the Bill, why does she urge us to pass it? This is really puzzling. Hence, I find the stance of certain government officials highly questionable. As for Secretary Gregory SO, my criticism for him has been clearly recorded in the Official Record of Proceedings. He has made the wrong efforts. He should have spent his energy on persuading copyright owners, especially American copyright owners, to accept the fair use exception.

Let us activate the procedure under Rule 55(1)(a). It is never too late to mend. Secretary SO can do so. President, as I said earlier, American copyright owners have no reason to object to this exception, as it has been adopted by their country for six to seven decades.

President, some changes in circumstances relating to the Bill as well as certain new viewpoints that are worth discussion and thorough consideration have come into the picture only after the dissolution of the Bills Committee and the submission of the report of the Bills Committee to the Council. Hence, instead of entering the Committee stage despite so many problems, we should in fact "revive" the Bills Committee — you may say so if you like — so as to handle the unfinished work and enable the Bills Committee to submit another report. This is how the Bill should be handled. We should let the Bills Committee submit another report to the Council. Then, we will process the Bill on the basis of the report.

My final piece of advice to the Government is that it should not focus only on obtaining enough votes for the passage of the Bill. The violence of such high-handedness may give rise to some undesirable scenarios and exacerbate the disputes in the community. I so submit.

**MR FREDERICK FUNG** (in Cantonese): President, I support the motion moved by Ms Cyd HO to commit the Copyright (Amendment) Bill 2014 to a select committee. President, I will try to discuss this motion from two perspectives: the positive perspective of looking at the advantage of this move and the negative perspective of analysing the disadvantages of not doing so.

President, I believe you must also be familiar with Rule 55(1) of the Rules of Procedure. Let me read it out: "When a motion for the second reading of a bill has been agreed to, the bill shall stand committed to a committee of the whole Council, unless — (a) the Council, on a motion which may be moved without notice by any Member immediately after the bill has been read the second time, commit the bill to a select committee; or (b) the President is of the opinion that the bill would specially benefit or otherwise specially affect some particular person or association or corporate body, in which case he may direct that the bill be committed to a select committee." There are two paragraphs, (a) and (b), respectively on the endorsement by the Legislative Council and the consent of the President. Rule 55(2) provides: "Notice of proceedings upon a bill in committee of the whole Council shall not be required to be given by the Member in charge of the bill." Rule 55(3) provides: "Proceedings upon a bill in select committee shall be begun upon a day appointed in accordance with Rule 79(2) (Procedure of Select Committees)."

What then does Rule 79 provide for? I will also read it out as I believe that some Members may not have read it. Regarding the Procedure of Select Committees, "(1) The deliberations of a select committee shall be confined to the matter or matters referred to it by the Council, and in the case of a select committee on a bill shall be confined to the bill committed to it and relevant amendments. (2) A select committee shall meet at the time and the place determined by the chairman. The meetings of a select committee shall be held in public unless the chairman otherwise orders in accordance with any decision of the committee." President, I must emphasize that the time is to be determined by the chairman.

President, I have read out all the provisions of the Rules of Procedure relevant to this motion debate today because I hope Members can know clearly that committal to a select committee is possible either with the endorsement by the Legislative Council or with the consent of the President. If a bill is really committed to a select committee, the select committee shall hold its meetings in accordance with the motion proposed by the Member at the determined time and place. In other words, there is a time limit.

President, let us first look at this from the positive perspective. In my opinion, Ms Cyd HO's motion basically has three advantages. The first is that it can buy time, which is what we need. We are now discussing this important issue at the Legislative Council meeting. Some may not consider it very important, and there may be some sort of disagreement here. Actually, it may well be possible to settle the disagreement through negotiations, only that there is not enough time. This motion can precisely give us more time for further discussions. Yet, as I have said just now, this procedure of committal must be conducted at the determined time and place. How much room is still left for us to determine the time? President, I believe Members all know that the term of the current Legislative Council will come to an end this mid-July and an election will follow. In other words, from January to mid-July, we have at most six months only, and these six months is the time limit for this select committee. On the other hand, if we do not set up this select committee and continue with the existing confrontation, disputes and tug-of-war, President, can you say for sure that we can finish the scrutiny of the Bill before mid-July? We are all aware that there are 18 bills waiting to be scrutinized, and there are also the debates on the Budget and the Policy Address. Many subjects must be debated during the Council meetings on Wednesdays. Therefore, not much time is left for the Council.

The establishment of a select committee is just like opening up a new path and vacating the main road for the handling of normal, pressing and livelihood-related bills and the debates on the Budget and even the Policy Address. The Council can thus move on along two tracks at the same time. This is what I mean by the advantage of buying time. Why don't we do so? We are talking about six months only. Does the industry think that it cannot even wait for another six months? Or, does it instead think that it is more acceptable to see the continuation of disputes in the following six months and the lack of any settlement afterwards? This is hard to understand. We must look at the situation clearly and ask ourselves why we should select the unworkable approach rather than choosing the workable one.

Second, must the whole thing be something like a deadly fight without any common ground? President, the three amendments we in the democratic camp propose will not lead to any deadly fight. I have discussed with some people in the business sector — I will also meet with the Hong Kong Copyright Alliance next week. I find that there is in fact room for discussion on some of the issues. The amendment regarding user-generated content is one example. In cases where the user-generated content is just a non-profit-making act meant merely for self-entertainment, such as singing a song and uploading the video clip to the Internet like the Chief Executive, people cannot possibly make any money, right? Just let them do so, I would say. Are we even supposed to prohibit such acts? Are we even supposed to prohibit such acts in charitable functions? In my constituency, cultural and recreational activities are often held. Kaifongs used to be invited to sing in the playground during such activities. But this is no longer permitted because royalties must be paid, and the exact amount of payment is unknown as five or six organizations must be paid. As a result, I have not held any such activities over the past year. Why should the Bill preclude the holding of such activities, which do not compromise the interest of the business sector? I believe the sector will not mind the holding of these activities. President, all these should require further discussion. A select committee is the precise venue for discussing such issues.

Moreover, another amendment we propose is on contract override. I think this can also be discussed with the business sector. Under the contract override provision, once a contract with the clause of "all rights reserved" is signed, all parties to the contract are forbidden to use the copyright works concerned despite the fact that exceptions under certain circumstances are set out in the legislation. Is it possible to negotiate with the business sector, so as to ask why it must be so

strict as to impose contract override? President, I believe this may not be the original intent of the sector. There is room for negotiation on such issues, isn't it? If we can hold negotiations and settle the two issues I have mentioned within six months — I have said earlier the time limit is six months — would you agree that there will really be a way out for the Bill?

The third amendment is on fair dealing and fair use. This seems to involve how to define what is black and what is white, and it is very difficult to come to any agreement. However, two countries upholding the market economy in the world have been adopting them, so both fair dealing and fair use are theoretically within the acceptability of the market economy. There should be no conflict and no deadly fight at all. It is just that our focuses are different. Is there also room for negotiation? In this regard, I really do not know. We may really need expert assistance in our discussion, or we may even need to invite American and British experts to talk about how to resolve the differences between the two. All sides must sit down for a frank discussion in order to achieve results.

President, there is room for discussion for at least two of the three amendments, and they can be dealt with in six months. This is the second advantage.

The third advantage is even more important. At present, disputes are common in Hong Kong. Things are always perceived as either black or white, and the two sides are forever diametrical opposites. The world is actually multi-coloured. I often describe the world as multi-coloured. Black mixed with white is not always grey or grey only. Rather, there are many colours and all sorts of colours indeed. If everybody can really come to an agreement, a state or atmosphere of unity will ensue, which is good to the industry, netizens and Hong Kong society. Is it really true that this can be achieved if we spend six more months? I do see this possibility. President, in view of these three major advantages, why don't we go ahead?

On the contrary, what will be the result if we do not do so? The result will be very big trouble. First, the Legislative Council will be in deep trouble, overwhelmed by an atmosphere of bitter struggles and deadly fights. It will not be possible to pass the Bill, in which case the Chief Secretary for Administration and the Chief Executive will blame us. However, their criticisms so far have been basically irrelevant to the Bill. They have even meddled with how much

we are paid and what we are supposed to do without mentioning the pay of government officials and the Chief Executive. This will become another battlefield apart from the Bill. Secretary, how negotiations be possible in that case?

Besides, as we all know, the present Chief Executive of Hong Kong has been criticized for his belligerence. He will foment discord over some issues from time to time with the intent of stirring up disputes. The Bill is an example, so are the University of Hong Kong (HKU) incident and the appointment of the pro-vice-chancellor of the HKU. The present discussion on how to amend the University of Hong Kong Ordinance to improve the governance of the HKU is yet another example. Actually, it is possible to discuss many issues frankly, but at the moment, we do not have any opportunity.

Some people ask if pan-democrats are prepared to hold negotiations. When it comes to any such negotiations, we all know that the more powerful side is invariably the initiator of negotiations, or even the first one to propose the forms of negotiations and make concessions. The more powerful side is never the side having less leeway. Rather, the more powerful side always has greater leeway than the less powerful side. President, if we even fail to discern this difference underlining power contests, we should not be engaged in politics. In English, there is this saying: "politics is the art of the possible". This is usually translated as "政治是妥協的藝術", which means "politics is the art of compromise" when back-translated to English. However, I have an alternative rendition: "政治是行得通的藝術", which means "politics is the art of identifying the workable" when back-translated. This means that if one does not aim to identify the workable when handling an issue, one is engaged in mere debates and power struggles for their own sake rather than engaging in politics. If one is really engaged in politics, one should always seek to identify the workable.

President, throughout the handling of the Bill, the industry has been accusing us of intending to strangle the industry. It is said that if we do not pass the Bill, the industry will have no business prospects and it will be the end of everything. However, has the industry ever thought about — I do not intend to stir up any arguments here — all the online entertainment and creations? I can remember that the industry has recently provided some figures, saying that in the 1990s, Hong Kong produced an average of over 200 movies annually, but the number was just 50 last year. They say that the situation is really very



miserable, as business is very poor and no movies are produced for people. Yet, I would like to ask them a question in return. What have happened in Asia over the past two decades? First, there was the "J-pop", and now there is the "K-pop". Their show businesses were very backward, but why have their movies, songs and dances improved and risen to popularity so quickly? Let us look at dancing as an example. Those who dance are mostly young people, and if we compare Hong Kong dancing performances with Korean dancing performances, we will find that the former is more entertaining. Circulated on the Internet are at least 20 Hong Kong productions that are plagiarisms of others' works. One caricature, for example, depicts a person sustaining the stab of a knife from another person standing on his shoulders. Both the movements and postures are plagiarized from a Korean work. Such examples can show the deplorable state of Hong Kong, and I mean to be negative when citing these examples because I hope that we can all ask ourselves if Hong Kong itself has also gone wrong, and the Bill is not the only problem. If plagiarism is indeed so widespread, can one single piece of legislation rescue the industry? I do not believe so.

President, let me cite one more example to highlight another situation, the earlier discussions on whether a television licence should be granted to Hong Kong Television (HKTV). People outside the industry think that the HKTV will bring in fresh competition. We believe in free competition and free trade, and we think that the more competition, the better. Yet, why was HKTV not granted a licence eventually?

**PRESIDENT** (in Cantonese): Mr FUNG, you are digressing from the subject, aren't you?

**MR FREDERICK FUNG** (in Cantonese): No, I am not. If we do not establish a select committee ... The industry has given us many examples to explain that the Bill is indispensable. I would like to tell them that sometimes, the sad state of the industry has nothing to do with legislation. Very often, it has to do with Hong Kong itself.

President, the last point I would like to talk about is ...

**PRESIDENT** (in Cantonese): Please do not make comments which are not related to the subject.

**MR FREDERICK FUNG** (in Cantonese): The last point I would like to talk about is that if we continue with this struggle between black and white, there will be no happy ending, and the overall atmosphere will not improve. We cannot provide a sound platform for local writers, stakeholders and businessmen to have a better opportunity to do a better job in this regard.

President, I would like to reiterate the point I made earlier. If a select committee is established, we can buy more time and we are only talking about six months at the most. Second, regarding the three amendments proposed by the democratic camp, we believe we can find room for negotiation, and actually there is room. I believe the pro-establishment camp has also discussed with the business sector. They also agree that certain parts can be changed. In that case, why don't we allow more time to do a better job?

Finally, President, I believe you have heard me read out Rule 55 of the Rules of Procedure earlier. Of course, I believe Ms Cyd HO's motion may not be passed due to the disagreement of pro-establishment Members. However, under Rule 55(1)(b), the other condition for the establishment of a select committee is to have the President's approval. President, you are full of political wisdom, and the LEE Po incident has particularly highlighted that your political wisdom is far higher than that of those in power. President, I hope that you will exercise your political wisdom. If this motion is not passed, I wish you would invoke Rule 55(1)(b) of the Rules of Procedure to establish a select committee.

Thank you, President.

**DR KENNETH CHAN** (in Cantonese): President, I rise to speak in support of the motion moved by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure to commit the highly controversial Copyright (Amendment) Bill 2014 (the Bill) to a select committee for further consideration.

This motion concerns Council procedure and how to deal with the "congestion" of agenda items now faced by the legislature. Hence, this is a problem-solving motion which attempts to find an avenue through the mechanism

under the Rules of Procedure. If this avenue is supported, the first problem that can be solved will be the "congestion" problem. Both the Government and the Legislative Council Secretariat have clearly pointed out that 18 bills are still awaiting scrutiny before the term of the current Legislative Council comes to an end. I have been participating in the scrutiny of some of these bills, and I am also the Deputy Chairman of the Bills Committee on Chinese Permanent Cemeteries (Amendment) Bill 2015 and the Bills Committee on Private Columbaria Bill. Moreover, as the Deputy Chairman of the Panel on Environmental Affairs, I am particularly concerned about the environmental-related bills, such as the bills relating to the disposal of waste electrical and electronic equipment and the recycling of glass bottles. The progress of these bills is certainly our concern. In my view, the "congestion" that the Council now faces is caused by the disputes arising from the Bill. I earnestly hope that this problem can be solved expeditiously before the end of our term of office.

Should Ms Cyd HO's motion be passed under the separate voting system of the legislature, the oft-mentioned "congestion" problem can be directly and instantly eased or even resolved. This is obviously one big advantage of her motion. I am reiterating this point here because I hope the public can know that with Ms Cyd HO's motion, pan-democratic Members have proposed a method that can directly solve the "congestion" problem.

Let me draw an analogy between our present problem and driving. When drivers notice a vehicle breakdown on the road ahead, is it advisable for them to get off their cars and gather around the vehicle that has broken down to see if they can repair the vehicle, change its tyre or examine its engine parts? Or, should they instead follow the very common advice in respect of vehicle breakdowns: summoning a tow truck to haul the vehicle that has broken down to the hard shoulder on one side for repair and further handling? People should not leave the vehicle that has broken down unattended in the middle of the road or simply abandon it on one side. Rather, the vehicle should be towed to the hard shoulder for repair and handling. This can at least enable the vehicles behind to pass through. This is just a common-sense solution to traffic blockage. There is indeed some wisdom in the Rules of Procedure, as it lets us know that when encountering situations like the present one, we may invoke Rule 55(1)(a) to temporarily put aside the protracted scrutiny of a contentious bill, so that we can focus on settling the various conflicts therein.

The Legislative Council has in place a set of established practices and rules on select committees, yet very few Members — particularly those who oppose Ms Cyd HO's motion — have discussed them in detail. Perhaps these Members have already decided to veto the motion, so they just do not bother to do any serious studies. But I think these Members should really study these practices and rules carefully and comprehensively. The reason is that the pro-establishment camp has the upper hand and more seats in the Council, so pro-establishment Members have greater chances to chair such select committees and take charge of related matters. Anyway, I trust they have already accumulated adequate experience and wisdom. With this, and the expertise and support of the Legislative Council Secretariat, they should soon be able to sort out which problems should be tackled.

Such problems have long since been apparent. In fact, during the scrutiny process, the Bills Committee already explored various angles and perspectives, asking whether it was possible to sharpen the focus by setting up a forum of discussions for all stakeholders, including copyright owners (that is, the Hong Kong Copyright Alliance), netizens, people who are concerned about "Internet Article 23" and those who believe that the protection and exemption for netizens are still insufficient and further discussion is therefore necessary. This is exactly the function of a statutory select committee formally set up under the Rules of Procedure of the Legislative Council. It can deal with the various outstanding issues left by the Bills Committee in the previous stage. This is exactly our thinking and intention.

Some Members do not buy this idea. They say that the Bills Committee has already held very lengthy discussions and over 20 meetings, arguing that since time is both precious and limited, it does not make sense to set up a select committee. I of course understand that time is precious and limited. I fully understand all these things. But can we also argue that setting up a select committee will give us extra resources and extra time for dealing with all the disputes? The answer is definitely in the affirmative. In a similar way, we also established a number of select committees in the past to investigate the case of the Express Rail Link and other issues of concern. In a similar way, we established various select committees to seek more time, more room and more resources for handling issues of public concern in society. President and Honourable Members, what I hate most to see is the frequent need for great haste in handling matters.

Frankly speaking, haste is also found in many democratic representative assemblies, including the United Kingdom Parliament that I am more familiar with — because I teach British politics. The House of Commons often needs to rush along in the handling of parliamentary business, such as state affairs, ruling party matters and the annual Queen's Speech at the beginning of every legislative session (the British equivalent of our Policy Address), which announces the government's policy agenda set for completion within one year or 13 months. The House of Commons is in a way just like a "hand-raising machine". We may be impressed by the Prime Minister's eloquent speeches in debates, yet in the course of any legislative process, the 600-odd Members of Parliament (MPs) all know that there are loads of work awaiting their handling, so they must hurry up with the legislative work. As a result, those of us who study British politics observe that problems with the technicalities of many regulations and laws are noticed only in course of actual implementation. All the 650 MPs can work independently, and each of them is a political superstar with immense exposure. Why is the legislation passed by them so shoddy? The term for this is "making poor law", meaning that the enacted legislation is shoddy and incomplete. Lack of time is the reason. Since MPs do not have enough time for scrutinizing bills, they just want to pass them quickly and consider the introduction of amendments later if necessary. But this problem is not easy to handle. Colleagues familiar with parliamentary politics and democratic systems will frequently hear related complaints and worries. This is indeed a vexing problem. Hence, inevitably, the United Kingdom Parliament and the national assemblies of other countries are all looking into the provision of more opportunities or mechanisms in the legislative process, in the hope that rather than seeking to pass bills and finish their job in great haste, legislators can spend more time, resources and efforts on improving those bills under scrutiny that are either contentious or shoddy. The Administration may think that the Bill is already good enough. But can it still do a better job? Can it give still more consideration to people's needs? Can it bring all those people who hold diametrically different opinions together for discussion? This is exactly the direction that we want to follow.

Let us return to the United Kingdom Parliament. The Rules of Procedure of the Legislative Council is modelled on the Standing Orders of the United Kingdom Parliament, but there is actually one thing in its Standing Orders that we have not learnt from. After the hasty passage of a bill in the House of Commons, the bill does not become law immediately. Rather, it is referred to the House of Lords. The legislative process in the House of Lords is not marked

by so many rules of procedure like ours, and the whole House will sit together as one committee to finish the First, Second and Third Reading of a bill. Hence, participation in the House of Lords is ample, comprehensive, equal and balanced. Very often, a bill may be passed hastily by the House of Commons where the government commands the majority vote, but when the Bill is referred to the House of Lords, it will undergo a slow process of improvement and refinement. This is a parliamentary tradition in the United Kingdom. You may say that this is a lovable tradition manifesting the wisdom of balance — bills passed hastily by the House of Commons can be slowly rectified, improved and properly handled in the House of Lords. What is more, over the past few decades, the inability of the House of Commons to deal with so many matters due to the shortage of time has led to the development of Westminster Hall debates. With this debate arrangement, some issues are debated and processed in the Westminster Hall in parallel with those handled in the House of Commons. The issues handled in Westminster Hall debates have the same legal status and constitutional position as those handled by the House of Commons. Besides, like the House of Commons, Westminster Hall debates also require officials to give reply and explanation, and MPs will also express their views.

President and Honourable Members, this is the inevitable trend. We all know that time and resources are precious and limited. But we must also note that even the United Kingdom, a major democracy with rich parliamentary experience, still keeps exploring more room, platforms and time in its democratic procedure, so as to ensure that while MPs rush along to enact laws to resolve policy and livelihood issues in the country, they will still have enough time to think clearly and carefully and enact good laws that can reduce disputes. Besides, such opportunities, time, platform and room can also be used to compel the government to squarely face the laws passed hastily by the House of Commons. For example, the ruling party is now the Conservative Party, and as long as there is the support of more than half of the 650 MPs, a bill can already be passed. But many MPs may regret later on, thinking that many opportunities were wasted and the law may lead to opposition and do harm to the people, thus even impairing the credibility of the government and those MPs who raised their hands in support. They may not have paid any attention to the relevant bills due to time shortage. It is only when they are asked afterwards that they suddenly realize that the bills concerned have already been passed, because at the time, they only pressed the button along with other MPs — maybe, in the United Kingdom Parliament, MPs do not press any buttons in voting. I mean they only

walked to the hallway at the back to cast their votes along with their peers. They only need to follow the instruction of the party. When people ask them what a certain bill is about afterwards, they can only answer, "I don't know."

This is just like ... I hope the Secretary would not mind. I must say that instead of spending any time on trying to locate Members and drag them back to the Chamber, instead of exhorting and advising Members that they should go back to the Chamber, the Secretary should actually spend some time on explaining the Bill to Chief Secretary for Administration Carrie LAM, because she has openly admitted that since the Bill falls outside her portfolio, she knows nothing about it and has not paid much attention to it. I am puzzled by her remark. The Bill is put forth by the Government. It is a highly controversial bill and a major concern of the public. It has even caused the serious "congestion" of agenda items in the Legislative Council. So, as the Chief Secretary for Administration, the highest-ranking official of the Government and a member of the accountability team, she is actually duty-bound to familiarize herself with the Bill. I know that Chief Secretary for Administration Carrie LAM must be capable of comprehending the Bill; she just cannot be so incapable. But she simply says she is not going to get involved. It looks like people in this Government simply do not know what their colleagues are doing, and when one official gets into trouble, others will only say they want to help. But when offering help, they simply make the wrong efforts and even expose some embarrassing truth, such as the fact that she herself is not clear about what these disputes are all about. If the Chief Secretary for Administration cannot even know what the disputes are about, she will of course fail to understand this motion debate initiated by us. We in this Council represent and care about ... We are deeply concerned about how they will be affected if the Bill is passed.

A responsible government should work with the legislature to explore how to create an opportunity, build a platform and strive for more time and resources for solving the "congestion" problem. Any government that aspires to good governance and sound administration should have the creativity, courage and commitment to stand up to the challenge, instead of just sitting here to pressurize the legislature. Doing so will only highlight the authoritarianism of the Government and its lack of wisdom to deal with the embarrassing tension between the executive and the legislature.

With these remarks, President, I support the motion moved by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure to commit the Bill to a select committee.

**MR GARY FAN** (in Cantonese): President, it is now 5 pm. Barring any unforeseen circumstances, it is about time royalist Members take a scheduled fresh air break, refreshments break and lavatory break. I believe that during the short duration of my speech, they will walk out *en masse*. I hope that my prediction will not come true, though.

President, I speak in support of the motion moved by Ms Cyd HO to commit the Copyright (Amendment) Bill 2014 (the Bill) to a select committee for further consideration. Last week, Chief Secretary for Administration Mrs Carrie LAM wrote to you, the President of the Legislative Council, criticizing that in the scrutiny of the Bill, certain Members had resorted to the stalling tactic of making incessant quorum calls, thus preventing Members from discharging their duties and plunging the Legislative Council into a state of disequilibrium. She later also wrote to Mr Andrew LEUNG, Chairman of the House Committee, and criticized that filibuster had caused a serious "congestion" of agenda items in the Legislative Council, thus rendering the timely passage of many government bills impossible. For that reason, she appealed to Members for their understanding and concerted effort in the spirit of upholding the co-operation between the Executive and the Legislature.

Nevertheless, President, as stated in your reply to the Chief Secretary for Administration, the Administration's totally unyielding stance on the amendments is real cause of the paralysis of the Legislative Council, and the reason why the Legislative Council is in such state of disequilibrium ...

(Mr CHAN Chi-chuen raised his hand)

**PRESIDENT** (in Cantonese): Mr FAN, please wait a minute. Mr CHAN Chi-chuen, what is your point?

**MR CHAN CHI-CHUEN** (in Cantonese): President, I request a headcount.

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



(While the summoning bell was ringing, THE PRESIDENT'S DEPUTY, MR ANDREW LEUNG, took the Chair)

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

**DEPUTY PRESIDENT** (in Cantonese): Mr Gary FAN, please continue with your speech.

**MR GARY FAN** (in Cantonese): I express welcome to all the pro-establishment Members who have returned to the Chamber to listen quietly to other Members speeches after taking a fresh air break, refreshments break and lavatory break scheduled by themselves in line with the practice of the Correctional Services Department.

Deputy President, the Government thinks that since it has enough voting support, it can do whatever it likes in this legislature and reduce it to a mere rubber stamp. For that reason, it still tries to force through the Bill even though it is opposed by the public. This is the real reason for the paralysis of the Legislative Council. The Government itself is a living example of exploiting one's power to the fullest extent.

If the Government really wants to deal with the Bill or the agenda items caught in the "congestion", it should really consider the amendments proposed by Members. Or, if pro-establishment Members really fear so much that there will be no time for scrutinizing the 10-odd economy- and livelihood-related bills on the waiting queue, they should also support the motion proposed by Ms Cyd HO to commit the disputes to a select committee for settlement, so that the Legislative Council can consider other bills.

Deputy President, there are still many unclear areas in the Bill, and this has caused public concern. The Neo Democrats, which I represent, considers that the Legislative Council should not enter the Committee stage hastily lest this may turn the present deadlock into a complete fiasco. Instead of adopting a high-handed approach of forcing the public to accept the Bill, the Government should commit the Bill to a select committee for consideration. Actually, this

will allow all sectors in society to have more time to digest the Bill. The public, netizens and copyright owners will have more time to express their views. Differences can thus be reduced. Besides, this can also allow pro-establishment Members to have more time to understand the details of the Bill before they consider the amendments once again in the Legislative Council.

Deputy President, I disagree with Mr CHAN Kam-lam, Chairman of the Bills Committee, who told the media earlier that establishing a select committee would be tantamount to overriding the work of the Bills Committee. I maintain that this remark is senseless. Why? It is because a bills committee does not have the participation of all Legislative Council Members. A bill passed by a Bills Committee may not necessarily be acceptable to all Members. It is for this reason that Rule 55(1) of the Rules of Procedure provides for the moving of a motion immediately after Second Reading to commit a bill to a select committee.

Moreover, under Rule 79(1) of the Rules of Procedure, "the deliberations of a select committee on a bill shall be confined to the bill committed to it and relevant amendments". In other words, Deputy President, there will not be another scrutiny process. Under Rule 56(1) of the Rules of Procedure, any committee of the whole Council or select committee shall not discuss the principles of the bill but only its details. The proposal of committing the Bill to a select committee is not tantamount to overturning everything and restarting work all over again. Quite the opposite, the select committee will hold further discussion on the details of the amendments proposed by the Bills Committee, and that is the task of the select committee.

Deputy President, under Rule 55(1)(b) of the Rules of Procedure, the President of the Legislative Council is actually vested with such power, that is, if "the President is of the opinion that the bill would specially benefit or otherwise specially affect some particular person or association or corporate body, he may direct that the bill be committed to a select committee." When President Jasper TSANG was explaining to the media his reason for not exercising this power, he only said that if the Bill was committed to a select committee, the Legislative Council might be unable to vote on it within the current legislative session, and that the Bill should therefore stand committed to a Committee of the whole Council. The President did not talk about and consider whether the establishment of a select committee would dwarf or override the work of the Bills Committee. Therefore, I suppose Mr CHAN Kam-lam's opinion is probably in the wrong direction.

Deputy President, in fact, the Bills Committee did not reach any consensus on the three amendments proposed by Members now. Thus, it is impossible for the committee of the whole Council to provide sufficient time for thorough discussion. Mr Dennis KWOK's amendment, which requests the addition of provisions to limit contract override, is also based on the fair dealing exception in the United Kingdom like the Bill proposed by the Government. The aim is to ensure that the exceptions granted to netizens under the copyright law will not be undermined by private contracts. Regarding this proposal, although each side stuck to its own ground in the discussion of the Bills Committee, the Government was of the opinion that it was worthy of detail consultation. The only thing was that the Government thought that an amendment should not be made hastily. For this reason, a select committee will be better than a committee of the whole Council because the former can serve as a useful platform for consultation allowing all social sectors to participate and express their opinions directly.

Deputy President, the amendments proposed by Mr CHAN Chi-chuen and Ms Cyd HO include the "fair use" doctrine adopted by the United States or the "user-generated content"(UGC) concept adopted by Canada. The doctrine or regime proposed in these two amendments are adopted by countries, regions and governments where the development of the copyright law is more advanced than Hong Kong. Nevertheless, the Government has been refusing to accept these proposals all along. Even the Government itself has not laid down a standard for the parody and caricature exception as proposed by the Government.

We frequently talk about the definition of caricature given by the Director of Intellectual Property when she was asked about the definition in December last year. She said that caricature was something that evoke a tacit sense of fun in an individual. As to the case that the Chief Executive uploaded a video clip of himself singing a song to the Internet, she said that the Chief Executive, as a public figure, should qualify for exemption under the category of commenting on current affairs. All these vague and ever-changing definitions are exactly the grey areas that cause the concern of Hong Kong people and netizens. It is necessary for the Government to further clarify these definitions. The establishment of a select committee will enable Members to consider these three amendments in a more focused way, thereby narrowing down the different views of all sides on the amendments. Besides, this will also allow Members who expressed strong views on the Bill during the Second Reading, such as Mrs Regina IP of the New People's Party's or Dr CHIANG Lai-wan of the

Democratic Alliance for Betterment and Progress of Hong Kong's, to take part and get a better understanding of the contents of the amendments and to listen to the views of all sides.

Deputy President, the scrutiny process over the last month or so seems to be slow, but actually Hong Kong is going through a learning process. The Chief Executive, government departments, public officers, Members as well as the public have all gained a better understanding of the Bill during the debate on the Bill over the last month or so. Of course, it has also brought about some queries. I believe it is the first time for public officers and Members who are present in this Chamber to hear the meaning of "streaming gameplay" and "Tat Gor", a name that young people know so well.

A year ago, it was rumoured in the online community that a game company hired this "Tat Gor" to demonstrate a game which it solely distributed. The rumour caused the dissatisfaction of netizens, and they criticized "Tat Gor" for being paid to engage in live stream gameplay. The war of words among netizens arising from this rumour has shown the fact that young people are basically adverse to the intrusion of commercial acts into their live stream gameplay session. Young people love live stream gameplay not because they want to make money or to infringe copyrights, but just because they want to chat with like-minded friends and to look for sympathetic responses. Members do not understand the world of young people. Members do not even know what live stream gameplay is. But they have to be responsible for endorsing the Bill. This will suppress this area of freedom for young people, and that is why there is backlash from young people.

Another instance is the upload of the song "I like you" to Facebook after the Chief Executive had made a cover version of the song. I believe that it can serve as a good lesson for public officers, including Chief Secretary Carrie LAM, who do not deal with the Bill. To everyone's surprise, the Government was still unable to locate all the copyright owners when it replied to the question raised by Mr CHAN Chi-chuen. It can be clearly seen that a better understanding can bring about more questions, and this will also generate a more concrete discussion of the Bill.

For that reason, this reminds me of Mr MA Fung-kwok sitting next to me. He has sneezed just now. He is a representative of the publishing sector. He said in October 2012, that is, the time that we all took office: if netizens want to work on a secondary creation, they may give Andy LAU a call, pay the royalty, get a licence signed by him and everything will be okay. However, after the

cover version of the song "I like you" made by Chief Executive LEUNG Chun-ying, I believe Mr MA Fung-kuok no longer dares to say so. Because even if one sings a song with Steve WONG Ka-keung of Beyond like the Chief Executive, one must still deal with many complicated copyright issues. Even Steve WONG Ka-keung could not help much. Deputy President, even though Chief Executive LEUNG Chun-ying has a big team of legal professionals to back him up, there are still many complicated copyright hurdles to overcome, and up to now, they are unable to locate all the copyright owners. It must then be even more difficult for common people and common netizens to know what is going on. This is also the issue that we are now debating and what we should pay heed to.

Deputy President, some people say the Bill is just like a gun to be used only when necessary. It is to be used only when necessary. But we know that it is now a time that people would call a stag a horse. Hong Kong people's mistrust of the LEUNG Chun-ying regime is deep-rooted. Our experience in the past tells us that even such a gun will be used to kill if it falls into the hands of the LEUNG Chun-ying regime. Recently, the Police arrested two journalists who were just tracking the Secretary for Education, Mr Eddie NG, as a media target. This shows that the LEUNG Chun-ying regime will stop at nothing and use all available weapons when suppressing the freedom of Hong Kong people.

Deputy President, for that reason, the Legislative Council is duty-bound to establish a select committee to further clarify the arguments of the three amendments, so as to reduce differences, address the concerns of all sides and try to strike a better balance between protecting the interest of copyright owners and that of netizens and Hong Kong people.

Deputy President, the Neo Democrats will not endorse the passage of this unjust and unclear Bill. The stance of Members of the pan-democratic camp is very clear. Once the Bill enters the Committee stage of the whole Council and the Third Reading process, Members may speak for unlimited times on the amendments. No matter how pro-establishment Members schedule their fresh air breaks, refreshments breaks and lavatory breaks like the Correctional Services Department, there will still be an impasse. By then, unless the Government is willing to withdraw the Bill, the President of the Legislative Council will have to invoke Rule 92 of the Rules of Procedure to curb the filibuster. This will bring forth more disputes and queries instead of narrowing differences.

The Legislative Council President, Mr Jasper TSANG, met with Members of the pro-establishment camp and pan-democratic camp last week and today due to the spates of abortive meetings. In fact the power of the President of the Legislative Council is not limited to this. If the President of the Legislative Council himself invokes the power under Rule 55(1)(b), he may direct that the Bill be committed to a select committee. He is capable of easing the impasse that we are facing and making it possible for the Bill to have more concrete discussions in a select committee. I think that when compared with invoking Rule 92 of the Rules of Procedure by the President to curb the filibuster, this will lead to fewer disputes. Besides, it will enable the work of the Legislative Council to better meet public aspirations.

Deputy President, I hope the Government will not exploit its power to the fullest extent. I so submit and I support the motion proposed by Ms Cyd HO.

**MR SIN CHUNG-KAI** (in Cantonese): Deputy President, during the Second Reading of the Bill, I was attending a meeting at the Financial Reporting Council and was unable to come back in time to deliver my speech. I can only speak now in support of Ms Cyd HO's motion that the Bill be committed to a select committee.

Deputy President, during the Second Reading of the Bill, Mr Kenneth LEUNG explained the copyright of songs using "Hotel California" by the Eagles as an example. Unfortunately, Glenn FREY, the lead singer of the Eagles already passed away. Deputy President, I like the Eagles' "Hotel California" very much. The last two lines of this song are "You can check out any time you like, but you can never leave". This means you can pay the bill and check out any time, but you can never leave the hotel. Yanis VAROUFAKIS, the ex-Minister of Finance in Greece, once used these two lines to describe Greece's entry into the Eurozone — Greece can clear its debts but cannot leave the Eurozone. If we apply these two lines to copyright users, I think there are also similarities. The Chief Executive already paid \$650 to some of the copyright owners concerned. However, from the Secretary's reply last week, we see that the rights and interests between the Chief Executive and the copyright owners have not been completely cleared up. The Chief Executive is of course willing to pay the fees, but this does not mean that the case can then be resolved completely or the question of the rights and interests concerning copyright can be completely dealt with.

Deputy President, we are facing the international agreement, the rights and interests of copyright owners and users. Specifically, all should be about the issue of interests. We have to strike a proper balance that is acceptable to all sides. Nevertheless, it is obvious that the existing Bill is unable to strike a balance acceptable to all sides, at least to the young generation as I feel. On the Internet, social media, they ...

**DEPUTY PRESIDENT** (in Cantonese): Mr SIN, although you did not speak during the Second Reading debate, I have to remind you that the topic of discussion at present is that the Bill be committed to a select committee. Please focus on this topic and do not diverge in your speech.

**MR SIN CHUNG-KAI** (in Cantonese): All right, I understand. It is because I need to explain that since we are unable to strike a proper balance of interests, we need more time. We thus have to commit the Bill to a select committee in order to find the right balance. This is where the logic lies. Please let me explain in detail the logic concerned.

Since online activities and social media are a very important part of young people's life, they tend to express and share their feelings through digital means. In many cases, they will also use some ...

**DEPUTY PRESIDENT** (in Cantonese): Mr SIN, I have to remind you again that you have diverged in your speech. The President of the Legislative Council has already clearly stated that Members should present their arguments to state whether they support or oppose committing the Bill to a select committee. We are not conducting a Second Reading debate now.

**MR SIN CHUNG-KAI** (in Cantonese): I know. The argument is that the existing Bill is unable to strike a balance acceptable to all sides, especially the young generation whose reaction to this Bill is especially strong. So, Ms Cyd HO wants to commit the Bill to a select committee under Rule 55(1)(a) of the Rules of Procedure.

We should not think that the problem can be resolved after this Bill is passed. The young generation are very worried about this Bill. The problem now is totally different from the problem of piracy faced by copyright owners 20 years ago. A pirated product is clearly a physical object. However, streaming and the communication right under our discussion now do not involve any physical objects or replicas. What we discussed 20 years ago was physical infringement, but this Bill today aims to give copyright owners the communication right to deal particularly with online infringement.

Speaking of describing this Bill as "Internet Article 23", I would think that it actually depends on where we stand. If we are on the side of users, our feeling will be similar to the last two lines of "Hotel California": "You can check out any time you like, but you can never leave". We will surely say that this is a draconian law. Nevertheless, if you are on the side of copyright owners, you will probably query whether is this law is strong enough to deter online infringement acts. The answer must of course be in the negative. We see that in the countries with the communication right, online infringement is still very serious ...

**DEPUTY PRESIDENT** (in Cantonese): Mr SIN, you have diverged in your speech once again.

**MR SIN CHUNG-KAI** (in Cantonese): Deputy President, I have not diverged in my speech. There were other Members who diverged even more earlier on.

**DEPUTY PRESIDENT** (in Cantonese): The arguments that you just mentioned should have been presented during the Second Reading debate. You are not debating whether the Bill should be committed to a select committee. Although you slightly mentioned that occasionally, your speech is not focused on this subject.

**MR SIN CHUNG-KAI** (in Cantonese): Deputy President, I will explain the arguments with my best efforts. However, I think you are using different yardsticks.



There are only four Legislative Council meetings before 16 March. There will be a total of 15 hours for discussion tomorrow and the next day. There will have 24 hours for discussion at the meeting convened on 3 February. On 24 February — if this discussion will continue after the delivery of the Budget, and continue on Thursday and Friday — there will be 20 hours for discussion. At the meeting which will commence on 2 March, there may be 24 hours for discussion. If we exclude some time for questions, by 16 March which may be the deadline ... why will I say that this may be the deadline? Because the Government have to submit the Vote on Account Resolution. If this Bill cannot be passed by 16 March and we are thus unable to deal with the Vote on Account Resolution, the Government will have to face a fiscal cliff. In brief, when we do not have any funds on account, there will be a crisis facing the operation of public services.

Hence, if we sum up the meeting hours from tomorrow to 16 March, there will be about 107 hours. I feel that it will be less than 100 hours after excluding some time for dealing with the Budget. During this period of time, the Third Reading debate has to be finished. Besides, the President has divided the Committee stage amendments into five sections. By calculation, each section may only have less than 16 or 17 hours for discussion, and it is basically not possible for each Member to speak. Since this Bill is so complicated, if the Government forces its way through the Legislative Council, there will be adverse effects on the Government and society, and it will also be unfair to Members as we do not have sufficient time to debate it in the Legislative Council.

Deputy President, in view of the large controversy in the present society, we should actually offer some opportunities.

I have recently heard that some copyright owners might accept the "fair use" doctrine — the Secretary is shaking his head, and he may respond to this in due course — some people have also approached us. They asked whether we would continue our filibuster if the "fair use" doctrine was accepted by them. In my view, we can still continue our discussion at the present situation. Two weeks ago, the Secretary put in his efforts in holding a meeting with Members and copyright owners. I hope that after this Bill is committed to a select committee, the Secretary can still make an effort to co-ordinate for a few more meetings outside this Chamber. In fact, I also hope that the Secretary can arrange a few more meetings in order to reach a consensus or accept part of the suggestions.

I of course understand that among the three kinds of amendments, UGC (user-generated content) may be the greatest concern of copyright owners. A part of — "a part of" is what I emphasize — the hearsay is that they accept the "fair use" doctrine. If this is true, will we accept this Bill? I hope that the Secretary can listen carefully to the views of different sides. He can also approach copyright owners and listen to their views. In my opinion, when the Legislative Council discusses under such a condition, it is difficult to resolve this kind of controversy. The existing controversy is substantial. Deputy President, the opposition camp does not want to put up any delay. Of course, the opposition camp has a lot of views on LEUNG Chun-ying and the Government of the Special Administrative Region (SAR). However, this Bill has triggered strong repercussion and reaction among the new generation, particularly the young people. Whether it is passed, it will have very great impact on the future.

Therefore, Deputy President, I hope that the Secretary can withdraw the Bill and submit other bills which are behind schedule. Otherwise, he should support that the Bill be committed to a select committee, so that the select committee can play the role that the Secretary should play. The Secretary should co-ordinate both parties. Co-ordination for only once is actually not enough to solve the problem. Last time, it was a meeting among Members, copyright owners and the Government. If a discussion can be arranged among the Government, users (that is, the "Keyboard Frontline") and Members, to be followed by another discussion with copyright owners, or some other meetings which may include a quadripartite meeting, a foundation can start to be formed and the differences can then be narrowed. But the Secretary has failed to do anything further after making a big start. I am not sure if this is due to the fact that the Secretary has received a new instruction that the Bill must be passed by the Legislative Council, and any postponement or co-ordination would not be possible. Hence, the aim of Ms Cyd HO's motion is to provide a solution to the present condition.

The reason for telling you the number of hours for discussion during the coming few meetings is that we are worried. If the discussion of this Bill cannot be finished at the meeting on 16 March so that the Vote on Account Resolution cannot be dealt with on schedule, a fiscal cliff will emerge. This will pose a very serious problem to Hong Kong. I of course do not hope that the Government will, taking this fiscal cliff as a pretext, coerce this Council into passing or vetoing this Bill. Deputy President, all of us will be losers in that case.

Secretary, during the last meeting, I pointed out that at the beginning, I supported the resumption of Second Reading of the Bill, and I also advised the Democratic Party to support it. Of course, the Democratic Party has also listened to the views of young people inside and outside the Party. Why do I have to emphasize the young generation? Of course, more and more middle-aged people are now also using social media to disseminate and share some messages. However, this behaviour may breach the copyright law. As I quoted the song "Hotel California" at the start of my speech, the issue involving copyright is rather complicated. Even if you have paid the money, the issue may not be fully dealt with. Nowadays, users want to have one more item of protection. On top of the original protection of fair dealing, they want to have an extra protection like the UGC provisions in Canada. Secretary, I hope that you can listen carefully to their views or do some more work. I hope that the present controversy can be eased and the controversy in Hong Kong will not be further intensified.

I must sincerely advise the Secretary that this is not an easy question to deal with. The question of copyright has been a hot potato for a few generations. The Secretary might have heard my speech last time. Within one month after the amendments to the Copyright Ordinance were passed in 2001, the Government had to suspend the enactment of certain provisions of the Ordinance. Back then, Secretary CHAU Tak-hay even had to apologize to the public. In the capacity as Chairman of the Bills Committee on Copyright (Suspension of Amendments) Bill 2001, I also apologized to the public at that time. I do not want this to repeat. I hope that the Secretary can grasp the time to co-ordinate different sides, narrow the differences and handle the Bill properly.

I so submit.

**PROF JOSEPH LEE** (in Cantonese): Deputy President, I rise to speak in support of the motion moved by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure to commit the Copyright (Amendment) Bill 2014 (the Bill) to a select committee.

I have gone through the stipulations under Rule 55 entitled "Committal of Bills" in the Rules of Procedure. As pointed out in Rule 55(1), "[w]hen a motion for the second reading of a bill has been agreed to" — this is the present case — "the bill shall stand committed to a committee of the whole Council,

unless — ". This provision then provides for two conditions. I wish to talk about the condition under paragraph (b), which reads, "the President is of the opinion that the bill would specially benefit or otherwise specially affect some particular person or association or corporate body, in which case he may direct that the bill be committed to a select committee". In my view, the Secretary is not the sole target of our speeches in this debate on Ms Cyd HO's motion. More importantly, it is hoped that the President can exercise his power and bring forth this matter.

Members have already explained their viewpoints. But actually, the provision clearly stipulates one thing. I hope the President can understand that the Bill will indeed "specially affect some particular person or association or corporate body". Who will be affected by the Bill? Under this circumstance ... Certainly, according to Rule 79 on "Procedure of Select Committees" in the Rules of Procedure, "[t]he deliberations of a select committee shall be confined to the matter or matters referred to it by the Council, and in the case of a select committee on a bill shall be confined to the bill committed to it and relevant amendments". Having considered Rules 79(1) and 55(1)(b), I would like to ask the Deputy President to listen to the reasons why I think we should support the committal of the Bill to a select committee.

What associations or corporate bodies will be affected? Pan-democratic Members have proposed three amendments. Let me take the trouble to repeat them once again. Our three amendments concern ...

**MR PAUL TSE** (in Cantonese): Deputy President, a point of order. As far as my understanding goes, the motion now under discussion is moved under Rule 55(1)(a), and it has nothing to do with Rule 55(1)(b). I hope Prof Joseph LEE will not waste too much time on discussing Rule 55(1)(b).

**DEPUTY PRESIDENT** (in Cantonese): Mr TSE, please sit down. Prof Joseph LEE, please continue.

**PROF JOSEPH LEE** (in Cantonese): Actually, I talked about Rule 55(1)(b) in particular with the intention of drawing the President's attention to this provision. What is Rule 55(1)(a) all about? As stipulated in Rule 55(1)(a), "the Council, on

a motion which may be moved without notice by any Member immediately after the bill has been read the second time, commit the bill to a select committee". The motion moved by Ms Cyd HO is precisely based on this provision.

But after reading Rule 55(1)(b), I notice one important thing. I hope the President can listen to me. The President actually has one power. Ms Cyd HO has the right to move a motion under Rule 55(1)(a), and the President likewise has the power to do one thing. Please listen to me. I have come to know that after the passage of the motion on the Second Reading of the Bill, the President — although the Deputy President has now taken the Chair — may consider the idea of taking the initiative to direct that the Bill be committed to a select committee if he thinks that the Bill is very controversial or unclear, rather than doing so on the basis of the motion moved by Ms Cyd HO under Rule 55(1)(a). Why? The reason is that the Bill will have impact on people, associations and corporate bodies. Actually, the two approaches are not in conflict with each other. I would like to thank Mr TSE for pointing out that I should not discuss Rule 55(1)(b). That said, my only intention is to point out the presence of Rule 55(1)(b) in this motion debate under Rule 55(1)(a), and to ask the President to pay heed to our arguments.

Why do I say that the Bill will cause impact to people? We have proposed three amendments. The first one is on the introduction of "user-generated content"; the second one is on the inclusion of fair use exception; and the third one is on the addition of contract override provisions. I will not repeat their contents here as other Members and I already talked about them during the resumption of the Second Reading debate. Otherwise, the Deputy President may say that I have digressed from the present topic. Anyway, the three amendments all aim to improve the Bill. As far as my understanding goes, the amendments were not thoroughly discussed by the Bills Committee on Copyright (Amendment) Bill 2014 (the Bills Committee) — this is my understanding, to say the very least. I was not a member of the Bills Committee, but I have learnt from my friends that the Bills Committee's discussions were not thorough enough. Many organizations which will be affected have strong views.

What organizations have strong views? I hope the Deputy President can listen to the reasons why I support the motion moved by Ms Cyd HO under Rule 55(1)(a), and also to the contents of Rule 55(1)(b). Organizations that will

be affected include Youngspiration and Kowloon East Community. I have gathered some information and found that they agree to the inclusion of the more liberal exceptions based on "user-generated content" and fair use. This is their view. I have no intention to stir up any disputes, and I am only relaying the views I have gathered. The organizations concerned believe that the inclusion of Mr Dennis KWOK's proposal on contract override provisions as civil exceptions can provide them with greater protection. Certainly, it will provide them with even greater protection if it is stipulated that the offence of "Access to computer with criminal or dishonest intent" cannot be used in place of the Copyright Ordinance as amended to institute prosecution. But, these doubts have remained unresolved to date.

Well, the Deputy President may say that this Council will proceed to the Committee stage very soon, so we can debate all this by that time. But precisely for this reason, some have pointed out one thing. With the present development — regardless of whether Members think that a filibuster or a tug-of-war is now underway, we are now in a state of stalemate — can the present debate be regarded as an opportunity for the President to listen to our speeches on Rule 55(1)(a) and then consider the idea of dealing with this matter in accordance with Rule 55(1)(b)? The reason is that as some organizations will come under the impact, it will be more desirable to commit the Bill to a select committee, so that detailed discussions can be held. As I pointed out just now, Rule 79(1) provides that "in the case of a select committee on a bill shall be confined to the bill committed to it and relevant amendments". This can precisely provide more time for various sides to hold thorough discussions. Besides, Members can also exchange views and hold discussions on our amendments and also the Government's viewpoints at meetings of the select committee. In fact, other organizations likewise have strong views. For example, the views put forth by members of the Copyrights and Derivative Works Alliance and the Progressive Lawyers Group on the amendments are different from their perceptions of the Government's Bill.

After talking about organizations, I want to talk about people. How will people be affected? I have read some articles in preparation for this motion debate these days. Deputy President, please allow me to quote the arguments put forth by MA Ka-fai on 9 December about the impact of the Bill on ordinary people ...

**DEPUTY PRESIDENT** (in Cantonese): Prof LEE, I remind you once again that you have already spoken on Rule 55(1)(b) of the Rules of Procedure for quite some time. It is not the time for you to quote from someone's article now. Please only state the reasons why you support or oppose the committal of the Bill to a select committee.

**PROF JOSEPH LEE** (in Cantonese): Deputy President, I wonder if you have a pair of "X-ray eyes" or the ability to predict the future. But according to Rule 55 on "Committal of Bills" — let me repeat it once again — "[w]hen a motion for the second reading of a bill has been agreed to, the bill shall stand committed to a committee of the whole Council, unless — (a) the Council, on a motion which may be moved without notice by any Member immediately after the bill has been read the second time, commit the bill to a select committee". The purpose of requiring the motion to be moved by a Member is to enable other Members to understand why a bill should be committed to a select committee at that particular moment instead of proceeding to the Committee stage forthwith. This is precisely how I understand the provision.

I quote the views of other people because my views on this issue ... My hair has already turned grey, and I do not access the Internet very often. But even so, as a Member, I am duty-bound to bring the views of voters and Hong Kong people — I will make reference to their views — into this Chamber. Certainly, my arguments may not be convincing or compelling enough. So, I have read MA Ka-fai's article, and I hope the Deputy President can listen on. I do not think I have digressed from the present topic. If the Deputy President considers that I have already digressed from the present topic even before I begin to read out the article, he can certainly order me to sit down. But I think quoting the views of other people in a debate should be respected, to say the very least.

If the Deputy President has no objection, I will now continue to discuss the impact of the Bill on people. Ms Cyd HO proposes to commit the Bill to a select committee for detailed discussions on the three amendments put forth by the pan-democratic camp. This can in turn allay our concern. If Members do not mind my long-windedness ... In the remaining seven minutes of my speaking time, I will read out a related article published by MA Ka-fai in *Ming Pao Daily News* on 9 December. He mainly points out that with the passage of the motion on resuming the Second Reading debate on the Bill, people must be careful when using the Internet if the Bill is endorsed with enough support votes in the end. I

want to read out a few paragraphs of the article. But I am afraid I may be stopped for digression, so I will first read out part of the article to see if I will be stopped for digression.

He says that in the future, we must be careful when using the Internet. He asserts, "Ordinary netizens cannot possibly seek legal advice from lawyers every time before they post a clip online. They can only count on themselves ... Isn't it right to say that the new law provides for six exceptions? They must 'sharpen their head' and squeeze themselves into these six small holes ..."

**DEPUTY PRESIDENT** (in Cantonese): Prof LEE, you have digressed from the present topic.

**PROF JOSEPH LEE** (in Cantonese): Deputy President, I have not finished yet.

**DEPUTY PRESIDENT** (in Cantonese): I have already reminded you of the topic now under discussion.

**PROF JOSEPH LEE** (in Cantonese): Deputy President, I do not want to debate with you.

**DEPUTY PRESIDENT** (in Cantonese): What you are saying is related to the Second Reading of the Bill.

**PROF JOSEPH LEE** (in Cantonese): Deputy President, I am not speaking on the Second Reading of the Bill.

**DEPUTY PRESIDENT** (in Cantonese): Please continue.

**PROF JOSEPH LEE** (in Cantonese): Deputy President, I wish to reiterate that we are now — I am thankful to Mr Paul TSE for his reminder — debating the motion under Rule 55(1)(a). I only mentioned Rule 55(1)(b) in passing at the



beginning of my speech. Well, I now know that the Deputy President did listen to my speech. Of course, if the Deputy President thinks that my words sound disagreeable to him, I will move on to discuss Rule 55(1)(a).

Just now, I quoted from a newspaper article published by a commentator. He thinks that many things in the Bill and also the amendments are still unclear and very controversial. Following the passage of the motion on resuming the Second Reading debate on the Bill, Ms Cyd HO rose to propose that the Bill be committed to a select committee under Rule 55(1)(a). The views I quoted just now are the basis of my support for Ms Cyd HO's motion.

Just now, the Deputy President hastened to stop me for digression before I began to read out the fourth line. Certainly, I will not argue with him because of this. I have already spoken for 10 minutes, and only five minutes remain in my speaking time. But there are two pages to go before the script of my speech comes to an end. But this does not matter. I only want to reiterate that MA Ka-fai's article has raised a key point, the point that after the enactment of the Bill, people will still be unable to use the Internet without any worry despite the provision of six exceptions in the Bill.

Please allow me to spend some time on reading out the last paragraph, which reads, "After the enactment of the new copyright law, everybody will become current affairs commentators or comedy actors on the Internet. This will become a prevailing trend as it is the only way to play safe." This is the view of someone from outside the legislature. Of course, members of the Bills Committee have talked about some other commentaries. During the resumption of the Second Reading debate, Members already put forth different views. But I reiterate that Ms Cyd HO proposes the motion under Rule 55(1)(a) — although the Deputy President may not think that the approach under Rule 55(1)(b) as I have pointed out is applicable — to commit the Bill to a select committee for the purpose of holding thorough discussions on the Bill and also the amendments in accordance with Rule 79(1), with a view to achieving a balance for everybody and in turn allaying their concern.

Most importantly, the motion obviously will not be passed at the time of voting later on. And, after we have proceeded to the Committee stage, Members can rise to speak for unlimited times. Therefore, as rightly pointed out by some Members, the scrutiny of the Bill will only drag on and on. This will provide the Government with a basis to criticize us for hindering the progress of handling

other outstanding motions. Nevertheless, an opportunity has arisen, one which is presented by the motion moved by Ms Cyd HO under Rule 55(1)(a) and can allow us to set aside the Bill for the time being and refer it to a select committee for discussion. This way, we can have more time and room for discussing other motions in this Chamber.

Certainly, the Deputy President may think that the approach under Rule 55(1)(b) is undesirable; but then we hope to achieve one objective by speaking in this motion debate under Rule 55(1)(a). We also hope government officials can understand that we have scrutinized the Bill for as long as several weeks because we want to achieve a balance for those affected people, corporate bodies, associations, industry practitioners and users, so that everybody can use the Internet without any worry even if the Bill is passed, rather than having to follow MA Ka-fai's advice in his article and act as current affairs commentators or comedy actors whenever they use the Internet. I do not want to see this.

Thank you, Deputy President.

**MR CHAN KAM-LAM** (in Cantonese): Deputy President, perhaps each Member of the pan-democratic camp is tasked with a mission, that is, to use up the 15-minute speaking time. Even though they have nothing to say, they just keep speaking as what Prof Joseph LEE has just done. He cited the long texts of Rules 55(1)(a) and 55(1)(b) over and over again, but no one understood what he wanted to say. He then cited the speeches of other Members. His purpose was simple — to filibuster and to waste time.

Honestly speaking, the Copyright (Amendment) Bill 2014 is not a new piece of legislation. The legislature has been discussing it for a very long time. Besides, for quite some time before 2014, it was also widely discussed in society before it was ...

**MR ALBERT CHAN** (in Cantonese): Deputy President, point of order. May the Deputy President rule whether the speech of Mr CHAN Kam-lam now should be delivered during Second Reading. The yardstick you used for Members just now ... Will you please rule whether the present remarks of Mr CHAN Kam-lam should only be delivered during Second Reading.

**DEPUTY PRESIDENT** (in Cantonese): Mr Albert CHAN, please sit down. Mr CHAN Kam-lam, please continue with your speech.

**MR CHAN KAM-LAM** (in Cantonese): Deputy President, he just wants to interrupt my train of thought. It is because this Bill is not new. We have conducted a long consultation ...

(Mr Albert CHAN stood up)

**DEPUTY PRESIDENT** (in Cantonese): Mr Albert CHAN, please sit down and do not interrupt the speech of other Members.

**MR ALBERT CHAN** (in Cantonese): Deputy President, I have the right to ask for your ruling.

**DEPUTY PRESIDENT** (in Cantonese): I have made my ruling, and I have just asked Mr CHAN Kam-lam to continue with his speech.

**MR ALBERT CHAN** (in Cantonese): Deputy President, you should rule if he has deviated from the subject.

**DEPUTY PRESIDENT** (in Cantonese): Please sit down.

(Mr Albert CHAN was still standing)

**DEPUTY PRESIDENT** (in Cantonese): Mr Albert CHAN, please sit down. If you refuse to sit down and keep on talking nonsense, I will rule that your conduct is grossly disorderly.

(Mr Albert CHAN spoke loudly)

**DEPUTY PRESIDENT** (in Cantonese): Mr Albert CHAN, stop speaking.

(Mr Albert CHAN stopped speaking loudly)

**DEPUTY PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, please continue with your speech.

**MR CHAN KAM-LAM** (in Cantonese): Deputy President, the Bill was considered by the Bills Committee over a long period of time before the Second Reading debate of the Bill is resumed today. Therefore it is not ...

(Mr Albert CHAN stood up again)

**DEPUTY PRESIDENT** (in Cantonese): Mr Albert CHAN, please sit down. Mr CHAN Kam-lam, please continue with your speech.

(A Member spoke loudly in his seat)

**DEPUTY PRESIDENT** (in Cantonese): Members please do not make any noises in their seats.

**MR CHAN KAM-LAM** (in Cantonese): Deputy President, I believe if any Member abuses the Rules of Procedure, his conduct should be deemed grossly disorderly. The Deputy President may make the ruling as he sees fit.

I wish to point out that the Bill has gone through a lengthy deliberation process, contrary to some Members' claim that we are hastily entering the Second Reading stage. A lot of Members say that the Bill has not been discussed widely in society. But this is not the case in reality. We have convened 24 meetings. After the Bill was introduced to the Legislative Council on 17 July 2014 and a Bills Committee was established, we conducted more than 20 meetings to discuss the Bill. All the questions that are raised today have been discussed and considered by the Bills Committee. Mr Alan LEONG said it was the first time that he learnt many of the viewpoints today. He even said that copyright owners

did not intend to target on users, and they just wanted to charge intermediary platforms. But in fact that is not the case. We can see in recent days that even the Hong Kong Copyright Alliance has said that they also want to pass the Bill first and then review the possibility of granting further exemptions to copyright users. Therefore, I maintain that it is not necessary to commit the Bill to a select committee because it has passed through ...

(Mr Albert CHAN stood up for the third time)

**DEPUTY PRESIDENT** (in Cantonese): Mr Albert CHAN, I am giving you the final warning. Mr CHAN Kam-lam, please continue with your speech.

**MR CHAN KAM-LAM** (in Cantonese): Therefore, it demonstrates that the Bill has gone through a long and detailed deliberation process, contrary to some Members' accusation that no detailed deliberation was made and the Bill was hastily introduced to the Legislative Council for the resumption of the Second Reading debate.

Moreover, our Bills Committee was a *de facto* select committee. When the Bills Committee was first established, there were 25 Members in total. About one third of the Members of the legislature joined the Bills Committee. This is contrary to some Members' saying that only a handful of Members joined the Bills Committee and Members thus do not know the details of the Bill very well. I can even point out a figure in a crystal clear fashion. That is, Mr Gary FAN joined the Bills Committee, but he was the first member to withdraw from the Bills Committee — he left the Bills Committee in January 2015. We started the deliberation in July 2014, and he left the Bills Committee after he had attended a few meetings. For that reason, the speech he delivered today is full of misrepresentations. He shows very little respect to the deliberation of the Bills Committee. Therefore, I consider that it will be a waste of time if we commit the Bill to a select committee to deliberate once again.

Furthermore, some Members say that only one more month is needed for them to sort out all the problems. However, can such an objective be achieved? We have been working for one and a half years on this Bill before coming up with result today. But surprisingly, some Members say they only need one month to come up with some decisions and to deal with other things. This only

shows that they are not familiar with the Bill, and they are just making up excuses. It is irresponsible of them to hastily commit the Bill to a select committee for deliberation once again.

Deputy President, the situation now is not satisfactory. Their objective is to put up obstacles because some Members face pressure at the last minute and must take a U-turn and say they would support the three amendments. Today, some Members say we have to make an effort in the discussion and hopefully we can pass one or two of the amendments. This is what Mr Charles Peter MOK has said, but he has never been able to represent the views of the pan-democratic camp. Earlier, the Secretary worked very hard and met with copyright owners and discussed the matter with stakeholders. He hoped that a consensus could be achieved after meeting with them for two or three times, but a consensus could not be reached. Ms Emily LAU then blamed the Secretary for doing nothing. Mr SIN Chung-kai was more honest because he praised Secretary SO for working very hard and held some discussions with the relevant stakeholders. For that reason, what we should consider is whether we should still waste any more time and refer the Bill to another committee. Actually, it is not necessary.

Ms Cyd HO says that nowadays, everybody has a mobile phone and the use of mobile phones may lead to copyright infringement or violation of the law. I think this such remarks are alarmist, as it will make people who know very little about the Bill think that it is easy for people to break the law and face imprisonment after the passage of the Bill. Actually, I am of the view that perhaps Ms Cyd HO, the Member who proposes this motion, is up to something — she just wants to stall for time.

Furthermore, I want to speak on the "congestion" of agenda items now. Who has actually caused the "congestion"? A number of Members have made it clear that their purpose is to filibuster, and that the filibuster would cause a backlog, as other Bills are waiting to be scrutinized in the queue. Therefore, she suggests that it would be better to put aside the Bill and commit it to a select committee, so that it would not block the ensuing businesses. This sounds appealing. Members of the public also consider that reasonable and ask the Government why it is unwilling to take it out. Nevertheless, if we take a closer look, we will see that a lot of businesses in the Finance Committee, the Public Works Subcommittee and the Establishment Subcommittee are also held up. The purpose is again to cause "congestion". The "congestion" I am referring to is not just a traffic jam on the street; it is not just a traffic jam on the street near

the Legislative Council, or on side streets and narrow alleyways. Therefore, the problem is rather serious, and the chief culprit is the pan-democratic camp. Now they should rename themselves the "filibuster camp".

Deputy President, of course we know that there are exceptions and exemptions under this Bill. They are not limited to the six items that we talk about now. They include some exemptions we have discussed in the past. Of course, the most important thing that the greatest concern of most people care those six items. Now some Members want to add three more items. Can the select committee deal with these three items? Ms Cyd HO has made it very clear that she hopes that a select committee can deal with them. But, who will believe her? If a select committee can deal with them, then are our efforts in the past 20 months or so and the total of 24 meetings in the past one and a half years all useless? Or can it be said that we have not done any discussion at all?

Deputy President, Mr Alan LEONG says it seems that we have not conducted a thorough discussion. However, this is not true. He says that he cannot see what we have discussed in the report. But in my capacity as the chairman of the Bills Committee, I know that very well. Even the three important amendments that we have to deal with today were discussed by the Bills Committee. Besides, the Government also made a number of responses, including the replies concerning their acceptance or rejection, as well as the practices in other countries. The Government has provided clear explanation. For that reason, Mr Alan LEONG's allegation that we have not discussed these issues is not true. Since he did not take any part in the deliberation of the Bills Committee, he does not know those things too well.

Moreover, some Members say that the Bill must be scrutinized once again because not too many Members joined the Bills Committee. Several Members have made such remarks, in particular Mr CHEUNG Kwok-che. However, everyone knows that actually, Mr CHEUNG Kwok-che has not participated that much as far as the deliberation of the Bill is concerned. It is difficult for us to request each Member to join a certain bills committee and seek to deepen their understanding of the work of the Bills Committee. Therefore, I hope Members will stop making up excuses to deny the work done by the Bills Committee, and then try to resort to other means to hinder the normal deliberation of the Bill.

Deputy President, I regret that some Members are trying to put up obstacles while the Bill is going through the normal and statutory process. It is a rather special approach to refer the Bill to a select committee to scrutinize the Bill again

in addition to the statutory procedures of First, Second and Third Readings in the Legislative Council. The Deputy President also knows that even though it is stipulated in our Rules of Procedure, we seldom invoked that section in the past. We have all along been satisfied with the work of other select committees or bills committee, as they all conducted the deliberation on behalf of all the Members of the Legislative Council. For that reason, we seldom see a debate marked by such huge differences when the motion is put forward to the Legislative Council. For that reason, what we have seen today is something not ideal at all. It is rather depressing to see that the Legislative Council has reached this juncture today. As many Members of the pan-democratic camp like to put it, it is in total disarray as they are trying to delay the passage of the Bill by abusing the Rules of Procedure to the fullest extent, and at the same time to hinder the implementation of government policies. It is really very depressing.

I will oppose to the motion moved by Ms Cyd HO. Thank you, Deputy President.

**MR CHAN CHI-CHUEN** (in Cantonese): Deputy President, I request a headcount.

**DEPUTY PRESIDENT** (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

**DEPUTY PRESIDENT** (in Cantonese): Mr IP Kin-yuen, please speak.

**MR IP KIN-YUEN** (in Cantonese): Deputy President, I speak in support of the motion moved by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure to commit the Copyright (Amendment) Bill 2014 (the Bill) to a select committee for consideration.

Deputy President, before I speak on this subject, I wish to say that many pro-establishment Members regard this debate as part of the filibuster. Members may know that I am not that enthusiastic about filibustering. As a Council



tactic, filibustering sometimes works and sometimes it is unnecessary. What I am going to say on this subject is my own heart-felt and honest thoughts and it is absolutely not part of the filibuster.

As I said at the Second Reading debate, the problem this Council faces now is that its meetings often come to a standstill. I do not know if this Council, society or the Government is capable of solving this problem, stopping the standstill and then finding a way out, so that society can move forward. If we cannot find a suitable approach, the entire society may get stuck in the present situation, failing to move forward.

What is the present situation? Our view is that although pro-establishment Members have minority support in society, they undoubtedly take up more Legislative Council seats. As such, will this Council become autocratic? Given that pro-establishment Members have more votes in this Council, they can have any motion passed as they wish in any situation. If this is the way a representative assembly conducts its business, it can no longer be qualified as such. The present situation is that pan-democratic Members who have more public support but less seats in this Council finally find some means, by making use of various Council tactics including making headcount requests, and so on, to counteract pro-establishment Members.

These countermeasures are very important to pan-democratic Members because these measures can break the dominance or autocracy in this Council. These countermeasures, however, may also cause mayhem in the Council or bring it to a standstill. In fact, society is facing the same situation now. So, what should we do? Now in this Chamber we see pan-democratic Members do all the talking and pro-establishment Members remain in their seats. Do we want this situation to persist? We must untangle this tight knot; otherwise, we will only end up in two situations: either a definite win-lose situation or a lose-lose situation, but of which should not happen in a modern-day parliament.

Hence, in order to solve the present problem, we must find a way out. In fact, we have tried and discussed many approaches, one of which is to withdraw the Bill. But from the Government's perspective, withdrawing the Bill is the same as admitting its defeat. The Government and pro-establishment Members here are unwilling to accept this proposal. Another way out is to filibuster until

both sides become the losers, or until the harm is spread to the host of ensuing motions and bills. I believe Members may not wish to see this lose-lose situation as well. Then, what should we do?

I am glad that Ms Cyd HO has come up with a solution. Actually, before Ms Cyd HO proposed this solution, pan-democratic Members had already made a positive gesture by proposing three amendments to the Bill. The gesture shows that we are willing to explore various possibilities, to see whether we can arrive at a result agreeable to all. If these problems have caused serious mayhem to the Council now, I think Ms Cyd HO's proposal of moving a motion under Rule 55(1)(a) of the Rules of Procedure can open a new avenue for us to find a win-win situation.

In fact, a win-win situation is not truly a situation with two sides being the winners. There is no such thing. We all know that a so-called "win-win situation" means that both sides do not mind losing other less important things but they can retain, fight for or will not lose what they regard as the most important thing. Both sides will have their own gains and losses and they manage to be accommodating and understanding. A win-win situation is achieved under these conditions. When a select committee is established, more leeway can then be vacated from the Council business time to handle other bills or the upcoming Policy Address debate, Budget debate, and so on. All these are also important issues to society. At the same time, we can also have another venue to conduct more in-depth discussion on the amendments and various possibilities. I am not saying that the discussion there will definitely lead to a positive or negative outcome, but at least it will provide a good opportunity for us all.

In fact, I have thought about this subject for quite some time and I have also drawn on other countries' experience. Some Bureaux Directors have made overseas visits and drawn on overseas experiences, and Members have also done the same. I hold that we should bring these experiences back here after our duty visits. Let us look at parliaments or governments in other countries. In fact, they are often caught in a deadlock as well. For example on the subject of separation of powers, their presidents and senates may also run into a deadlock. The Legislative Council had a delegation to Germany [Ref: [http://www.legco.gov.hk/yr14-15/english/hc/parl\\_lia/duty\\_v/vp20150301-e.pdf](http://www.legco.gov.hk/yr14-15/english/hc/parl_lia/duty_v/vp20150301-e.pdf)] to learn about their bicameral parliamentary system. Their bicameral parliament may also be caught in a deadlock. How do they deal with it then? Since they

often run into a deadlock, they already have an effective mechanism in place. In the event that the German Bundestag and Bundesrat, the lower and upper House of their Parliament, reach a stalemate over a bill, they will then commit the bill to their Mediation Committee made up of an equal number of members each from the Bundestag and Bundesrat to reconcile their differences. They have some special arrangements which are absent in the Rules of Procedure of the Legislative Council. For example, their minutes of a meeting will only be made public eight years after the date of the meeting.

However, when our delegation met with the German parliamentary representatives, we also questioned whether their Mediation Committee was truly functional. They told us that the Mediation Committee worked very well, and that in recent years, except a bill on animal food which the Mediation Committee failed to endorse, it successfully mediated all other bills. The Mediation Committee has solved many problems for them. They told us that it was all a matter of counterbalance, which is a very important value of their parliament because Germany has experienced many ...

**MR PAUL TSE** (in Cantonese): Deputy President ... I believe the German experience he now mentioned is more or less the same as reading the Bible.

**MR IP KIN-YUEN** (in Cantonese): I could not hear what he compared the German experience to.

**DEPUTY PRESIDENT** (in Cantonese): Mr IP, please continue with your speech. However, may I remind you that you have started to digress from the subject.

**MR IP KIN-YUEN** (in Cantonese): Deputy President, I believe what I said is related to the subject. I am about to tell Members how it is related.

To avoid dominance by any particular side in a parliament, it is very important to maintain a counterbalance, as we can see from the history of Germany. They are very concerned about this issue. Hence, they have such a

mechanism designed in their constitution, which requires them to convince the other side in the process. If you are a politician in Germany, in order to get a motion smoothly passed in the parliament, you cannot only lobby for the support of the ruling party, but also the support of the majority people. Hence, a counterbalance is very important. It enables them to respect the minority camp and avoid dominance by the majority camp in their parliament.

Can the Legislative Council in Hong Kong do the same? If we can, I believe we will open up a whole new world. The Government wishes to break the present deadlock by proposing additional meetings, but this proposal cannot break the deadlock. Additional meetings will only offset the Council tactics adopted by pan-democrats. The two sides are actually still strongly antagonistic towards each other. The subject under discussion now is not a simple issue. Do we want the businessmen and the netizens to remain strongly antagonistic even after this Council reaches a decision? Are we willing to pay this social cost? If we can take a step forward to dissolve our conflict and avoid this high social cost, will this step forward be conducive to drawing society together?

(THE PRESIDENT resumed the Chair)

The problem now is whether we are willing to face squarely the very social dissension exists now. If we refuse to admit its existence, we can never truly solve the problem. If we refuse to admit that there is a serious divergence of views between us, and you resort to your number of Council seats to dominate over us while we counteract with our Council tactics, we will only end up in taking continual countermeasures and exerting mutual control, making us all unable to move a single step. This will hardly be good to Hong Kong.

I thus think that we should seriously review the few amendments proposed. Here, I do not want to say which amendment is correct or wrong. What I want to say is we need to handle these amendments seriously. The present proposal of committing the Bill to a select committee for consideration can provide a desirable venue for us to seriously look into the Bill. I do not think we can solve the present problem only by holding additional meetings. If we opt for holding additional meetings, does it mean that we will continue to resort to this approach

to face and tackle all future disputes and deadlocks? If we add more meetings, do we have to leave the Chamber for a break every 60 minutes and then come back? Are there no other better options to solve the present problem?

Hence, I think it is now high time to think about whether we have sincerely and honestly faced this serious disagreement in society and whether we are willing to solve these problems with good faith. When the two camps of Members get together at the select committee, they actually are representing the businessmen and the netizens to negotiate. Are we willing to pay the expensive social cost I just mentioned and further deepening social divisions? Are we willing to pursue a genuine win-win situation? While this Council is dominated by the views of the majority Members, are we willing to show respect to the views of the minority Members as well? If we wish to properly answer the questions I have just asked, I believe we should seriously consider the good approach made possible by the Rules of Procedure to solve the present problem. *(The buzzer sounded)*

**PRESIDENT** (in Cantonese): Mr IP, speaking time is up.

**MR CHAN CHI-CHUEN** (in Cantonese): President, facing the Copyright (Amendment) Bill 2014 (the Bill), the Legislative Council is now being caught in a dilemma or has even come to a dead end. This is what various sides should recognize. The democratic camp recognizes this, and hence it has been using various means, including asking for headcounts, and even asking all Members of the camp to leave the Chamber while the headcount is in process in the hope that the meeting can be adjourned. Besides, we keep on making speeches. This situation is unprecedented, which is different from the past in which only three or four Members stated to participate in filibustering.

Members from the pro-establishment camp also have their corresponding methods, which include taking a 15-minute break every hour in these few days. The effect of this method is quite good, as the ringing time of quorum bell has shortened. This method has also proved what I always say: If Members of the pro-establishment camp are willing to unite, the democratic camp will be unable to cause the adjournment of Legislative Council meetings. Therefore, in order to support the Government and to support LEUNG Chun-ying, apart from using

their lips to support and their fingers to press the buttons, they also have to use their bottoms. Today, they demonstrate how to support the Government by using their bottoms to reduce the incidence of headcounts.

President, you also need to admit that the Council is now being caught in a dilemma. You have also considered many methods to solve this problem. The method that you have so far thought of and announced to the public is to increase meeting hours. However, as I have pointed out many times, increasing meeting hours is not a solution. The motion in front of us for debate is moved under Rule 55(1)(a) of the Rules of Procedure by Ms Cyd Ho that the Bill be committed to a select committee. And I speak in support of it, of course.

First, I would like to point out that Mr Frederick FUNG just mentioned an argument. He said that beside Rule 55(1)(a), a select committee could also be set up under Rule 55(1)(b), but subject to the approval of the President. He just pointed out that if this motion was vetoed later, he would hope that the President would invoke Rule 55(1)(b) of the Rules of Procedure for the formation of a select committee. I do not buy Mr Frederick FUNG's argument. Because if 68 Members cast their votes to veto the motion of committing the Bill to a select committee, it will be unreasonable of the President alone to high-handedly suggest invoking Rule 55(1)(b) to set up a select committee. Nevertheless, President, two Members from the democratic camp have not spoken yet, and they are Mr Albert CHAN and Mr LEUNG Kwok-hung. Hence, if you want to exercise the power under Rule 55(1)(b), I suggest that you should invoke it before we vote on that motion. Because in this way, the President will not be accused of using the opposite way to deal with a motion on which a decision has already been made by the Council.

I of course support this motion. I will also take this opportunity to show my disagreement to some of the arguments put forward by Members of the pro-establishment camp in the past. I have counted that I am the thirtieth Member to speak on this motion. A total of seven Members of the pro-establishment camp have spoken before me. This phenomenon is very unusual, as only 28 Members have spoken during the Second Reading debate of this Bill. Why were there only 28 Members who have spoken during the Second Reading debate of this Bill? I do not want to guess the intention of Members. I know that some Members actually wanted to speak, but they did not expect that

the debate would be discontinued. They might intend to speak at a later time. Sometimes Mr Paul TSE even wants to be the last one to speak. However, they could not speak as the debate was discontinued finally.

Of course, some Members intentionally do not speak, as they think that if they speak, they will be participating in filibustering and this will lengthen the period of the meeting. Some people always say that this Bill has already been fully discussed. Nonetheless, I disagree with it, as I think that even during the Second Reading debate, this Bill has still not been fully discussed. I even have to point out that some political parties, such as the Liberal Party and the Hong Kong Federation of Trade Unions, did not have any representatives to speak for them during the Second Reading debate. In respect of such an important Bill, when they have expressed so many views to the press outside the Council, why did they not speak during the Second Reading debate? It might not be their intention not to speak in the debate, but was only due to suspension of the debate that they could not speak. I do not want to further guess their intention of not speaking in the debate.

Here, I would first refute Mr TANG Ka-piu for his remarks last week. He said that Members who were the most familiar with this Bill included Mr WONG Yuk-man and I. I thank him for including me. He said that I ultimately would oppose anything, and I wanted the voting down of this Bill. I have to clarify here that I absolutely do not want this Bill to be vetoed. During the Second Reading debate, I have already pointed out that we have many views of common, like we have to protect copyright and have to catch up with international standard. Hence, I only propose to move one amendment, which is about fair use. I hope that we can introduce open-ended exemption, while this Bill can balance the interests of both parties. I will then support the passage of the Bill. I hope that Mr TANG Ka-piu can clearly understand this point.

Mr TANG Ka-piu also said that the process of invoking Rule 55(1)(a) of the Rules of Procedure so that the Bill could be committed to a select committee was filibustering, and the process of setting up a select committee was also filibustering. He even asked how long would the work of the select committee take and how would the report be handled. He said that it was never-ending filibustering. I think such worries of Mr TANG Ka-piu are founded and are not totally irrational. He also said that the formation of a select committee was not a way out but was making a detour. I want to tell Members that making a detour is actually also a way out.

When being caught in a traffic jam, it is really impossible for us to reach the destination because there are a lot of vehicles waiting behind us. We will have to take a detour. After detouring, we may still fail to make any headway but come back to the original spot, bringing no extra benefits to this Bill. In their words, this may only be wasting time. However, to the overall situation, to other bills scheduled behind this Bill ... Today, many Members said that there were 18 bills. But this actually is not accurate. It is because following this Bill, there is the Bankruptcy (Amendment) Bill 2015. That means there are 19 bills. Last night, Prof Stephen CHEUNG, President of The Hong Kong Institute of Education (HKIEd), said that a bill needed to be passed by the Legislative Council for the HKIEd to attain university status. Misty-eyed, he said he only hoped that we could pass the bill concerned within this session of the Legislative Council, so that the students could graduate from the Education University of Hong Kong. In fact, we also want the HKIEd to attain university status, as we support the HKIEd to be upgraded as university after its many years of efforts.

If we can really make a detour and commit this Bill to a select committee, other bills can be deliberated speedily. This is making way for many other bills to be passed. Some Members are worried that this Bill may at the end be unable to be properly deliberated by the select committee. I of course will not be as naive as Mr CHAN Kam-lam who thinks that after being deliberated for more than a month, the Bill can be resubmitted to the Legislative Council and can go through all the legislative procedures. This cannot be guaranteed by anyone. However, this dual way of processing is really a way out.

Mr CHAN Kin-por suggested that we could follow the example of the Finance Committee in dealing with some agenda items in parallel. In brief, this is dual processing. On one hand, we discuss the item of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, while on the other hand, we deal with other discussion items. However, this suggestion is not legally based. If he has any legal basis, he can tell us. Anyway, this is not a topic to be debated today. There are numerous bills that the Legislative Council has to deal with in the meeting. The way with legal basis is to take out this Bill and have it committed to a select committee pursuant to Rule 55(1)(a) of the Rules of Procedure. Members are dubious of the effect of committing this Bill to a select committee for discussion. Nevertheless, whether it will be better or worse, at least to the general situation, to this or to the future Legislative Council, it still is a way out or a variation, and will bring some changes.



How much time do we have to deal with this Bill? Earlier on, a Member has done some calculations. We are now having a meeting today, and will have another meeting next Wednesday. Afterwards, it will be the Lunar New Year and the debate on the Policy Address. How can we fight for more meeting time? We have considered continuing the meeting after the delivery of the Budget — this has not been decided yet, but I think Members from the pro-establishment camp will also support this suggestion and it can be realized at the end — There will also be a meeting on 2 March. I would think that this meeting will last for three days, but some Members think it will only last for one day, as some Deputies to the National People's Congress (NPC) and Members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) have to go to Beijing. This meeting is included. On 9 March, since it falls on the week for NPC and CPPCC meetings, there will be no Legislative Council meeting. 16 March is a very critical day, as the last meeting in March is on 16 March. Mr SIN Chung-kai said earlier that if we were still dealing with the Bill on 16 March, a fiscal cliff would emerge.

In this connection, I have to make a clarification. Even if a select committee cannot be set up in respect of the Bill while our deliberation work is yet to be finished on 16 March, a fiscal cliff will still not emerge. It is because the Government can put forward a resolution to deal with the funds on account first. Of course, I have to state here that Members can debate on this resolution and each of them can have 15 minutes to speak. Hence, if we have to first deal with the funds on account on 16 March, it is still feasible. Even if the meeting is aborted that day, the President can still exercise his power to summon Members back to attend a special meeting during the Easter holidays in order to pass the Vote on Account Resolution. Besides, at the Committee stage on 16 March, for example, we can still propose an adjournment motion at the Committee stage. This is not the best way, of course. The best way is to invoke Rule 55(1)(a).

As Chairman of the Bills Committee, Mr CHAN Kam-lam has pointed out several times that 24 meetings were held by the Bills Committee. In each of his speech, the Secretary would also say that the Bill has been fully discussed during the 24 meetings, and that if a select committee is set up, the effect will be similar to that of the Bills Committee. I have to get at the fact of whether this Bill and its amendments have been fully discussed by Members during the 24 meetings of the Bills Committee. President, my answer is "definitely in the negative".

I have sufficient evidence to tell Members why this is in the negative. The reason is that the three amendments moved respectively by three Members of the democratic camp, including Mr Dennis KWOK, Ms Cyd HO and me, were passed in the Bills Committee. If the amendments were passed in the Bills Committee, any outsider will think that these amendments have been fully discussed in the Bills Committee, were voted in support before being submitted to the Legislative Council. However, what is the fact? The fact is that at the last stage when these three amendments were proposed by the Members, they were not fully discussed. They were only put to the vote by Members in a rush.

Members of the democratic camp are only the minority in the Bills Committee. The Bills Committee consists of 13 Members from the pro-establishment camp and seven Members from the democratic camp. How could these three amendments be finally passed? It was because Members from the pro-establishment camp were not present. They did not attend the meeting and thus did not oppose the amendments. Hence Secretary, the holding of 24 meetings of the Bills Committee does not mean that this Bill and its three amendments have been fully discussed. When they did not attend the meetings and cast their votes, but let these three amendments be passed in the Bills Committee and be submitted to the Legislative Council, it only showed that they did not care. This is similar to giving tacit consent by copyright owners, as mentioned by the Government. They give tacit consent to the submission of these three amendments to the Legislative Council through the Bills Committee. Thus, during the later stage of the Bills Committee, Members who are against the amendments have basically not fulfilled their responsibility of fully expressing their opposition views in the Bills Committee.

Therefore, do not tell me that the Bills Committee has already fully exercised its function, and the new select committee will only be repeating the work of the Bills Committee. When the public see the three amendments moved by the Bills Committee, they surely will think that they have been properly discussed by us. Some netizens thus say that they have to make an appeal in the newspaper to the public for their support to the three amendments moved by Mr CHAN Kam-lam. It is because at the end, Mr CHAN Kam-lam will not support the three amendments moved by him in the capacity as Chairman of the Bills Committee. And the Democratic Alliance for the Betterment and Progress of Hong Kong has also stated clearly that it will not support them. Do you find it extremely absurd?

Moreover, President, why may entering the Committee stage be worse than setting up a select committee? We see that the situation will be similar to that in the Bills Committee, as some Members want the meeting to adjourn as soon as possible. I actually do not know what they are rushing for. Even though they have different views, they would not air them out in the Bills Committee meetings. Perhaps from their point of view, even if the amendments were vetoed in the Bills Committee, Members from the democratic camp could also propose a number of amendments to the Legislative Council. For instance, Mr WONG Yuk-man intended to propose 903 amendments, which were finally reduced to 42 amendments by the President. But that is another case. There was a Member whose amendment was unable to be passed in the Bills Committee, or who did not propose his amendment in the Bills Committee. Afterwards, he proposed his amendment in his individual capacity in the Legislative Council. However, if the amendments were put to the vote and passed by the Bills Committee, they absolutely have their basis. If it is found out that the Bills Committee has lost its effectiveness, we should make things right before it is too late. By taking out the Bill, they can seriously express their opposition views in the select committee meetings. They can also oppose by way of obtaining evidence.

Due to time constraint, I would like to point out another mistake of the Secretary. Many people say that the last three amendments of us seem to come out of a rock. I am sorry. During the consultation in 2006, open-ended exemption has already been mentioned. But the Government has not been facing squarely to open-ended exemption. The three options proposed by the Government have also excluded open-ended exemption. The three options proposed by the Government include: Option one only clarifies criminal liabilities. Option two only proposes criminal exemption. Option three concerns fair dealing exception which is presently suggested to be listed out. Open-ended exemption has all along been unaccepted by the Government, and the plight at present is attributed to this.

**MR ALBERT CHAN** (in Cantonese): President, I am glad that you, the Honourable President, have resumed the Chair. Compared with the poor quality of the other so-called "President", I think your standard of presiding over meetings of the Council ...

**PRESIDENT** (in Cantonese): Mr CHAN, please speak on the motion.

**MR ALBERT CHAN** (in Cantonese): ... is quite satisfactory. President, I am just expressing my sadness. Sadness sometimes wells up in me when I give a speech due to the very low standard of that Deputy President.

President, many Members regard the motion proposed by Ms Cyd HO as a necessary means of filibustering. I hope they can learn thoroughly about the reasons behind such kind of motions in the Rules of Procedure, that is, the procedure under which "the bill shall stand committed to a committee of the whole Council" as stated in Rule 55(1). President, I believe that you in fact know very well that the Rules of Procedure in Hong Kong are modelled on British Westminster traditions. Members and the Legal Adviser of the Legislative Council may read this book in my hand more often, *Erskine May Parliamentary Practice*, which is the bible of parliamentary operations. This is important. One must understand the traditions and reasons behind a parliamentary system before he can understand the rationale behind the Rules of Procedure. Parliamentary procedures existed in ancient Greece as early as around 2 700 years ago. The British Parliament then further systematized and gradually amended such procedures, but it was not until the 13th century, the 15th century and the 16th century that such amendments went formally on record more comprehensively. That was some 2 700 years ago. Later, around 500 or 600 years ago, parliamentary arrangements became relatively more specialized, further evolving into today's parliamentary rules.

It is true that the Rules of Procedure in Hong Kong follow certain, but not copying all, procedures of the British Parliament, yet the committal arrangement can be regarded as an extremely important principle under the Rules of Procedure. Those Members said that this is such a special arrangement that has never been invoked in Hong Kong before. But let us draw reference from parliaments overseas. Such an arrangement was invoked 572 times altogether in the United States Congress over the last 20 years from 1989 to 2008, amounting to almost 30 times a year. As a matter of fact, respective parliaments have set up their own arrangements and principles on this mechanism or procedure. In fact, certain procedures under the Rules of Procedure aim to offer different types of members with opportunities, including those belonging to ruling parties and opposition parties, as well as minority members, so that they are granted various special or exceptional rights to deal with related opinions and issues, especially

those concerning committal or re-committal arrangements. Throughout the history of parliamentary development, certain procedures have been established with a purpose to specially grant exceptional rights to minority members. Why are these arrangements necessary? President, this serves a purpose to resolve and handle conflicts and problems by means of parliamentary procedures, including Rule 55(1) of the Rules of Procedure in our legislature. This is exactly an essential spirit of parliamentary democracy under a system of representative institutions.

Of course, under Communist rule, many lackeys of the Hong Kong Communist regime can only think of exercising instructions given by the Party. For example, some of the people who gain a seat in this Chamber or take the Chair are no different from a puppet. They simply have to exercise instructions from the Central Authorities, totally disregarding the spirit of representative assemblies in this Chamber. The key principle of representative assemblies is to resolve conflicts and disputes in society through the Rules of Procedure and parliamentary procedures. Nonetheless, on the surface, we still maintain what looks like a system with Westminster traditions, the Rules of Procedure included, yet this bunch of people are actually insane, President, right? They are insane. First, they totally do not understand and do not know what does it mean by representative institutions, nor do they understand the meaning of parliamentary procedures. Just like what I have just said, this is the character of a lackey ...

**PRESIDENT** (in Cantonese): Mr CHAN, you have already elaborated this point at length. Please do not repeat.

**MR ALBERT CHAN** (in Cantonese): President, I understand, but this is important. These are precisely the crucial spirit and principle behind my support for the motion proposed by Ms Cyd HO. I do so because I need to demonstrate and fulfil my duties as an elected representative, and to fully manifest and respect the Rules of Procedure, as well as to identify ways to resolve conflicts in society with the Rules of Procedure. In respect of the committal procedure, Members may spend some time to study *Erskine May*. Many Members of the Legislative Council had paid duty visits to the British Parliament where they attended lessons and meetings, but they probably had learnt nothing. *Erskine May* illustrates the fundamental purposes on the committal arrangement in its explanation at page 553. This arrangement basically serves three purposes: First, to add new

clauses during select committee stage; Second, members of select committee can propose amendments beyond the scope of legislation. I believe this is absolutely unacceptable in the eyes of those lackeys of the Hong Kong Communist regime. How can they propose amendments beyond the scope of legislation? They can only accept instructions from the Central Authorities and decisions of the Government. They would dutifully do whatever they are told. They will even skip the meetings of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC) and choose to stay in Hong Kong and attend any additional meetings of this Council if LEUNG Chun-ying so suddenly demands. They have to keep taking orders from LEUNG Chun-ying and become servants to him, even if they are members of NPC and CPPCC.

Third, *Erskine May* states that a select committee can enable members to reconsider amendments proposed previously. It is because, in the course of scrutiny of bills, it is unavoidable that we may have omitted some issues, and opinions will inevitably arise when the whole process reach a particular stage. We are not as omnipotent as God. We may commit error in our previous considerations, no matter whether we have already convened meetings for 24 times, 42 times or 240 times. This is a procedure under the system to offer an opportunity and a mechanism for anyone, particularly the minority members (some members are probably the only representative of their respective groups), to express opinions in the course of decision making. The member may need to express their views again after identifying an exceptional problem near the final stage, and if so they can point it out in the select committee, or as a matter of procedure, he can express a final aspiration on behalf of his constituency as an elected representative. This is why the United States can have 30 similar motions a year. However, in this Chamber, this is probably a defiance of orders from the Party and the leadership of the Government. They are just lackeys. This simply cannot be regarded as fulfilling parliamentary duties, and is in violation of the spirits and principles expected of an elected representative, nor is it a manifestation of the functions of a parliament.

If we can really set up a select committee through our debate at present, the conflicts can possibly be resolved. For instance, when attending a meeting with representatives of copyright owners arranged by Secretary Gregory SO earlier, I saw that they have different views and conventions in their trade. It was to be expected that certain senior bigwigs in the phonographic industry were so arrogant that they almost wanted to reprimand us and lecture us on how to be a legislator. However, those practitioners who respect democracy and our roles as

elected representatives basically recognize that this is a result of the serious backlash from many Hong Kong people against the Copyright (Amendment) Bill 2014. After all, pan-democratic Members in this Chamber represent over 50% of the people. Some copyright owners also respect such an alternative view, wishing to work out a solution through communication and deliberation.

Yet Secretary Gregory SO has jumped to the final word and determined that no amendment to the proposal would be introduced at this stage, as the issue has already been thoroughly discussed at many meetings held previously. In fact, the meeting he arranged did not aim to facilitate any reasonable contact and communication between us and copyright owners, instead it was done intentionally to smear and oppress any dissenting voices. What did the Secretary say when he met the media after the meeting? He talked about the seven-figure losses suffered by some copyright owners and extended his sympathy to them, without ever mentioning the respect offered by copyright owners to opinions expressed by Members. This is how the Government has unscrupulously smeared and oppressed the opposition camp through communication and meetings.

President, I explained my justifications for supporting the motion when I met with copyright owners. I told them that if they accepted such a proposal to set up a select committee, it could then endeavour to forge a consensus among all the opinions and differences. Copyright owners and we do know that the gap between copyright owners, the democratic camp and netizens on "Internet Article 23", that is, the Copyright (Amendment) Bill 2014, is not too large. Copyright owners basically realize that exceptions are necessary, the question lies in the mechanism concerned, how far exceptions are to be granted and whether they should be open-ended exceptions or selective exceptions.

Many copyright owners in Hong Kong are major United States corporations, while most of the largest copyright owners in the city are multinational institutions. Therefore, in respect of the amendment about fair use doctrine proposed by Mr CHAN Chi-chuen, an overwhelming majority of copyright owners in Hong Kong do accept the basic concepts and relevant legal constraints related to fair use when they deal with copyright protection in other countries. Why do companies of these copyright owners find no problem with the fair use doctrine in such other places as the United States, Taiwan and Korea, but then they rigidly insist on rejecting such doctrine in Hong Kong? A few multinational corporations told me privately that they in fact accept such doctrine,

companies in the movie industry in particular. It is the so-called representatives of certain copyright owners associations, especially those swollen with arrogance, that are so adamant in rejecting any proposals put forward by the democratic camp. Under the backing and direction of the Government, they stand firm with an unyielding attitude in every occasions, notably open occasions, to demonstrate political correctness. They would rather see the whole thing broken off than to give in. President, this is irrational. If we put the Bill in the perspective of international practice, we can readily see that the same company actually accepts the fair use doctrine in many places overseas.

Therefore, by setting up a select committee, we are to draw on the procedures refined under the system and wisdom after centuries of parliamentary operations, as well as to offer an opportunity ... and in fact, it was proven in other countries that such a mechanism of select committee was able to successfully deal with differences. President, there were cases of success. This Council is not the NPC, and we are not voting machines. Westminster traditions are not some Communist mindset. President, it is surely a test on your political wisdom if you are asked to apply this Communist mindset while presiding over the proceedings of a legislature with British democratic traditions. How can you possibly keep a balance in the course of application? This is probably one of the reasons for the failure of "one country, two systems" under which we have such a system and the Rules of Procedure on the surface, while operating under another set of culture, mindset and value in practice. As a result of this, our Council can never truly apply the rules and procedures of a democratic legislature.

Therefore, we believe that any motions related to Rule 55(1) of the Rules of Procedure will never be passed under a legislature whose thoughts are controlled under the Hong Kong Communist regime. This is yet another historic proof that Hong Kong will definitely go down the road of decline under Communist rule, while legislators will be reduced to slaves. (*The buzzer sounded*)

**PRESIDENT** (in Cantonese): Mr CHAN, speaking time is up.

**MR DENNIS KWOK** (in Cantonese): President, I rise to speak in support of establishing a select committee. I have four reasons but I would not make a long speech.



First, I have joined more bills committees than other Members. Of course, many Members were not members of this Bills Committee. Lately, I have talked with them in the Ante-Chamber and discovered that they actually are not clear about many details and the main issues of the Bill. Therefore, when we come to debate the Bill, they have no idea what the focus is. Under such circumstance, is there a need to establish a select committee so that more Members can have the opportunity to take part in the scrutiny of the Bill? They can then go through each provision seriously, professionally and carefully, understand what the present argument is and the reason behind the amendments we have proposed. We do have this practical need because many Members really have not taken part in this discussion at that time and have not joined the Bills Committee. They do not have a clue and do not know the whole picture. As a result, we cannot focus when carrying on with this debate and a lot of time has been wasted. This is the first point.

Second, we see that many views and voices have emerged in society lately, and discussion on copyright has generated constructive views. For example, the Chairman of the Hong Kong Bar Association (Bar Association) Winnie TAM — I believe her words surely represent her personal views — has put forward many new ideas and personal views on copyright legislation. Unfortunately, looking back at the past few years, her views have not been included in the Bar Association's formal statement or position paper. In fact, during our scrutiny of the Bill, we have also invited various organizations to give their views but as far as I can remember, the Bar Association has not explained in detail the provisions on the principle of fair use, contract override or UGC in its submission. It has mentioned nothing about whether they are needed or should be included in Hong Kong. Therefore, the merit of establishing a select committee now is that opinions which have emerged or surfaced lately can again be discussed in detail. I believe there can be a clearer perception of what kind of copyright legislation Hong Kong people in the 21st century need, and the public can have a better understanding.

Third, I now hear some copyright owners say that they are seriously considering whether to accept the amendment regarding fair use. Since they are also beginning to consider, this may present a golden opportunity for unravelling this fast knot we are having. Actually, the Government should not be bent on having its way and insist on immediate implementation. Rather, it should give us all some room to ponder. Even if the Government accepts fair use, does it mean that the sky will fall? Does it mean that the Copyright Ordinance will be

overhauled completely? No. In fact, many copyright owners have begun to consider accepting fair use as there is not much difference between it and the principle of the fair dealing framework under existing legislation. Moreover, it has been in place in the United States for years. Is it really impossible for Hong Kong to head in that direction? Actually, this can also give us space to stop and think whether not even one of the three amendments proposed by the pan-democratic camp is acceptable. Is it rational for copyright owners to say that if they are to accept the amendments, they would rather cast away the entire bill? I beg to differ. The establishment of a select committee can address this issue.

Finally, the fourth reason has to do with the Government's attitude. In fact, during the scrutiny of the Bill, we put forward our amendments at an early stage. Looking back, not only have we proposed amendments in this Bills Committee, but also in many bills committees, the Government's attitude yet is to accept none. After all, no matter what amendments the pan-democratic camp proposes, it will not accept. This is the attitude I have noticed in the past few years as a Member of the Legislative Council. This being the case, although we may propose numerous amendments, there is no way the Government will consider them seriously. Take my amendments on contract override and fair use principle as an example. As I look back now, the Government has all along stood to refuse to accept because it firmly believes that even if I propose them, there will not be sufficient votes to pass them. There really is nothing I can do. This has been the Government's attitude.

Fine, it has now come to this runaway situation, the Legislative Council is facing a huge backlog and much discontent has emerged in society. Nonetheless, the Government is still intent on pushing through. This has undoubtedly reflected that the Government should have maintained an open mind to seriously inspect whether our amendments are really that dreadful, so much so that not even one can be accepted. If it had tweaked its attitude, I believe it would have helped much to improve the operation of this Council.

Lastly, I would like to talk about what Mr IP Kin-yuen saw during his visit to Germany. He referred earlier to better co-ordination and collaboration among different parties in the German parliament, thus avoiding stalemates. I think they are worth our reference. If some subjects can be discussed, we would not need to resort to different gaming means in this Chamber, and this will be

conducive to the entire Council and Hong Kong's political culture. Therefore, I rise to speak in support of the establishment of a select committee. Thank you, President.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): President, is a quorum present now?

**PRESIDENT** (in Cantonese): A quorum is present in the Chamber.

**MR LEUNG KWOK-HUNG** (in Cantonese): Am I supposed to ask this question? Am I wrong? I am just being inquisitive.

**MR WONG KWOK-HING** (in Cantonese): Just go ahead and speak!

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): President, he yelled at me.

**PRESIDENT** (in Cantonese): Will Members please keep quiet. Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): Mr WONG Kwok-hing yelled at me and ordered me to speak. Is he the President?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please sit down if you do not wish to speak.

**MR LEUNG KWOK-HUNG** (in Cantonese): I wish to speak. He yelled at me and ordered me to speak.

**PRESIDENT** (in Cantonese): Please speak immediately.

**MR LEUNG KWOK-HUNG** (in Cantonese): Is there anyone who can yell at me and order me to speak in this Chamber? Mr WONG Kwok-hing, who is the President, you or him?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please sit down if you do not speak on the motion.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I would like to speak but I heard Mr WONG Kwok-hing's voice, telling me to speak and making me think that he is the President.

Let me speak now. Many people say that Ms Cyd HO wants to stir up trouble by moving a motion under Rule 55 of the Rules of Procedure at this stage to handle the matter. President, just take a look at the Rules of Procedure and we will notice that from the parts on First Reading of Bills and Second Reading onwards, an opportunity is given in Rule 55 for us to take a cup of tea and a bun. Why should there be such an arrangement? It is because we are dealing with the legislative process now. The current trend is to stop the filibuster in advance but we should not do things this way. We would try to figure out what we should do to have a problem resolved when we reach the stage in which a motion for the second reading of a bill has been agreed to, meaning that we would play it by ear. Hence, nothing is "predetermined" in this world.

Queries have been raised as regards the committal procedure under discussion, and it is argued that it would be pointless to commit the Bill to a select committee since it cannot alter the legislative intent of the Bill. Nevertheless, some amendments have now been proposed by Members of the pan-democratic camp and these amendments could only be proposed with the consent of the Government or the President. In giving such a consent, they should concur that the amendments do not run counter to the legislative intent of

the Bill. Hence, we consider it necessary to review once again the three proposed amendments or the discussions derived because the Chief Secretary for Administration has recently made an earth-shattering remark that she knows nothing about the contents of the Bill but that even so, the Bill should still be passed. I think the remark itself is alarming. In other words, the highest official in the Government knows nothing about the contents of the Bill and I have reasons to believe that she knows nothing either about the meaning of the arguments surrounding the Bill and the public opinion such arguments represent.

Judging solely from this, we see that Carrie LAM has actually told us candidly that it is the Government's attitude to disregard the objection to its proposals as long as it has secured enough votes to have them passed. If Jasper TSANG is not co-operative, he will also become a subject of attack. However, we will not handle business of this Council in this way. I am always ready to render assistance to the weak and will definitely fight for the oppressed. A helping hand will be lent to even Members of the pro-establishment camp in this Council.

As far as the committal of a bill is concerned, apart from a motion to this effect moved by a Member, it can also be done on the instruction of the President. The President may make a timely decision to exercise the power if things are not going well, a quorum is not present and we can no longer hang on, or when the filibustering Members are going too far. How can we resist if such an instruction is given by the President? If the President considers it appropriate to proceed with the legislative procedure and does not exercise his power, there is nothing I can do.

There is actually built-in mechanism within the Rules of Procedure to provide a buffer during Second Reading of bills. As for the details of the Bill, President, three amendments have now been proposed by Members of the pan-democratic camp and among the three proposed amendments, should we accept one, two or all three of them, or should we identify a common factor among the three for incorporation into the Bill by the Government? I hope the President would understand that the Government is 4 million times more powerful and capable than us and should be able to undertake a comprehensive review of our discussions here, the public sentiment and the hidden problems of the people and re-introduce the Bill into this Council.

However, the Government has failed to do so but when the issue of committal of the Bill is raised, they realize that it is a serious matter to deal with. If a motion to this effect is passed by this Council, be it moved under the instruction of the President or by an individual Member, the will of the Council to deliberate on the details of the Bill again is reflected though the legislative intent would remain unchanged. Let me say once again that it would be silly to accuse Ms Cyd HO of being unreasonable in moving the motion because approval has been granted for her Committee stage amendments (CSAs). Since no objection has been raised by the Government, it can be said that the intent of her amendments has already been included in the long title of the Bill. The moving of her amendments has been allowed and the only question is how it should be done.

President, if you have paid any attention to our debate here, you would notice that ringing of the summoning bell has been used by Members of the pro-establishment camp to substitute totally the delivery of their speeches. They simply do not speak. After we have requested a headcount, ringing of the summoning bell would be the reply of Members of the pro-establishment camp and we would be made to wait for them here. Mr WONG Kwok-kin has once said that it is no big deal to withdraw the Bill but since Carrie LAM has now demonstrated her determination to have the Bill passed, I do not think he will say the same thing again. Holden CHOW, another candidate from the pro-establishment camp, also calls himself a member in the minority and is striving to become a representative of the people. The aim of including the part on the committal of bills is to provide all Members with an exit after a motion for the second reading of a bill has been agreed to and this is a very important point.

What is the meaning of the saying here today that there is no need to have such an exit? It means that instead of an exit, some Members in this Council want to have a "through train". This is a point worth debating but it is hard to say since ringing of the summoning bell may again be used to substitute the delivery of speeches. No Member from the pro-establishment camp has said anything about our functions under the Rules of Procedure and the Basic Law. I will not stray away from the subject, please rest assured. I will only stray a bit away when I am criticizing Carrie LAM.

If we go on to take a look at the ensuing rules, we will notice that under Rule 56 on "Functions of Committees on Bills" of the Rules of Procedure, it is stipulated that "Any committee of the whole Council or select committee to

which a bill is committed shall not discuss the principles of the bill but only its details". I think this will pose no problem to us. Furthermore, "Any such committee shall have power to make such amendments therein as they shall think fit, provided that the amendments, including new clauses and new schedules, are relevant to the subject matter of the bill". It means that after the motion has been put to vote today, a very clear restriction will be imposed to allow for the making of further amendments to CSAs for which the Government's permission has been granted.

This is something which we cannot do now, unless Carrie LAM suddenly says that she has learned more about the Bill and instructs Secretary SO to withdraw the Bill so that further amendments can be made. This is another issue which involves her powers and functions and I am not going to say anything about it. What we are trying to do is to, amidst divergent views and if this Council really enjoys independence and autonomy, provide a forum for further discussion so that there will be no need for us to take order from other authorities.

We would be able to handle the issues involved if three Members from the pro-establishment camp, three Members from the pan-democratic camp and some politically neutral and independent Members from neither the pro-establishment nor the pan-democratic camp are willing to join the select committee to which the Bill is committed on a pro-rata basis. President, what are you trying to discuss with me when you ask to meet with me today? When you ask to meet with everybody today like Emperor Wen of Zhou meeting the feudal princes, what exactly are you trying to do? You want nothing but a select committee formed by you yourself so that you may discuss the matter with different groups of Members under your chairmanship. I think you have been put in a very difficult position.

A select committee should be established and both Mr CHAN Kam-lam and I should join so that we may sit down together and discuss the relevant issues with all parties concerned. Under the circumstances, everything can be discussed, including the way adopted to stop the filibuster, how meetings should be held. Why this cannot be done in accordance with the Rules of Procedure of the Legislative Council? If it is wrong to do so, what exactly are we trying to do today? Is it because we have not seen and talked with each other for a long time and thus have to meet and have a cup of tea together? Therefore, it is indeed very silly for those who object to the proposal under discussion to attend the meeting with the President today. Although the meeting with the President is a

meeting of an informal and a courtesy nature, I still entertain the request and attend the meeting. What we are now proposing is to set up a formal select committee to study the details of the Bill and I really want to listen to their views and learn about their logic for objecting to the proposal.

Do you consider the disputes behind the three amendments proposed to the Bill baseless? If so, just go outside the Legislative Council Complex to take a look or try to take note of the heated discussions on the Internet. As a legislator representing the people, I can tell all of you that I am against everything the Government stands for. Needless to say, I will definitely say no to everything endorsed by LEUNG Chun-ying because he is a person of no integrity. However, my initiatives should after all be well founded and this is the reason why I supported the "harsh measures" proposed by him. The point is: if the Government considers that there has been a long delay in amending the Copyright Ordinance, I have to point out that we should not be held responsible for this. In the previous legislative exercise undertaken to amend the Copyright Ordinance, it was proposed that the making of photocopies of books and publications might also constitute an infringement of copyright, thus causing panic among secondary school students and making the Government to step back. What does it have to do with us? What does it have to do with this Council? It was the Government which withdrew the bill introduced then of its own accord.

When the scrutiny of the legislative amendments proposed in the current exercise is now near completion, it has come to our attention that further amendments are needed and if the Government is firm on its stance of opposing to the amendments, we have to resort to filibustering. When both sides are caught in a deadlock, would it be better if the Bill could be committed to a select committee? With the setting up of a select committee, an independent report could be produced to hush Mr WONG Kwok-hing up, stopping him from criticizing others without making any comments on our proposals.

Those who have been following the development of Council procedure closely would notice that Rules 55 and 56 of the Rules of Procedure are actually adapted from the practice in the colonial era. Who was the President of the Legislative Council then? It was the Governor himself. After the introduction of a bill into the Legislative Council then, if any shortcomings are identified and the Administration has no intention to withdraw the bill, it would be committed to a select committee, is that right? President, as you may recall, the incident involving the Precious Blood Golden Jubilee Secondary School years ago had



aroused quite an uproar in society and on 14 July that year, the then Governor in Council announced suddenly that it would accept the recommendation of the commission of inquiry led by Rayson HUANG and open two new schools immediately. The decision allowed no room for discussion, did it not?

This built-in arrangement itself has given the President such great power that just like the Governor during the colonial times, he may override the whole Council. The Rules can be traced back to a very bad practice in the colonial era but since they have already been formulated, I as a Member should of course exercise my power under such undesirable rules and it is none of my business if you choose not to do so. Conversely, if a bill is introduced today but everyone turns his back on the Government all of a sudden, you may also exercise your power and commit the bill to a select committee under Rule 55(1)(b) of the Rules of Procedure. Why accusing someone of making much ado about nothing when a knife you use to kill is borrowed and used for self-defence? The knife is always there.

Hence, Members criticizing me here do not read books or newspapers at all. They never learn and just look at things superficially. Why should I devote so much time to speak on the issue? It is because I consider the procedures under Rules 55(1)(a) and 55(1)(b) of the Rules of Procedure necessary for the purpose of exercising check and balance against the Government. They may come in handy if this Council fails to stop the Government when it is being autocratic and refuses to withdraw a bill which has been read the Second time but has yet to be read the Third time. On the contrary, during the colonial times when the Governor was the President of the Legislative Council, he was of course the one who had all the say.

Therefore, President, it is my opinion that if Members of the pro-establishment camp really consider it no big deal to have the passage of the Bill delayed for a few months, representatives such as Mr WONG Kwok-hing should be elected among themselves as soon as possible to join a select committee consisting of eight members formed to study the issues concerned. If the matter can be referred to the select committee for deliberation and discussion by three Members from the pan-democratic camp, three Members from the pro-establishment camp and two politically neutral Members, ringing of the summoning bell here will no longer be required.

My argument in respect of the issue in question is very clear and I hope Members of the pro-establishment camp would see my point. There are no absolute answers to questions in this world and if we fail to break the deadlock, I can tell you in advance that I will move an adjournment motion again when the Council is in committee. I will not give up. Should the whole Council be allowed to come to such a deadlock simply because of a command given arrogantly by the Chief Secretary for Administration who does not even know anything about the contents of the Bill? President, she was not paying you a visit but instead, storming into your office very rudely. I did not have the chance to run into her then, otherwise I would probably swear at her. I hope fellow Members would think it over, Mr WONG Kwok-hing in particular since he is always absent. Yet, Members are now more disciplined and he might be able to hide his shame.

With these remarks, President, I support the motion moved by Ms Cyd HO under Rule 55(1)(a) of the Rules of Procedure. I hope Members of the pro-establishment camp would not be awed by the tyrannical administration of Carrie LAM and "689" and behave like human beings to hold meetings with us.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Secretary for Commerce and Economic Development, do you wish to speak?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, after carefully listening to Members' speeches, I am still not able to find one convincing reason that we should commit the Copyright (Amendment) Bill 2014 (the Bill) to a select committee.

The Bill, reflecting the consensus among the Government, stakeholders and even the Legislative Council over the years, definitely brings forward a balanced and well thought out proposal. I also realize that Mr CHAN Kam-lam, in his

capacity as Chairman of the Bills Committee on Copyright (Amendment) Bill 2014, has illustrated thoroughly just now the background of scrutinizing the Bill as well as expounding its justifications.

I wonder why we still have to reject such a balanced and detailed proposal after all the in-depth discussions. Why do we need to set up a select committee to take the whole path again? I believe that it is a wise move to pass the Bill as soon as possible and focus our time and efforts on other issues that require our attention.

I wish that we can proceed expeditiously to Committee stage and debate with Members on the proposed amendments. I earnestly request Members to pragmatically vote down this motion.

Thank you, President.

**PRESIDENT** (in Cantonese): Ms Cyd HO, you may now speak in reply.

**MS CYD HO** (in Cantonese): President, I am very grateful to the pan-democrat Members who have expressed their views on this motion, as well as those pro-establishment Members who have spoken. Although I find some of the Members' speeches hard to bear, I still think that a few of them deserve my serious response later.

I would first respond to the brief speech made by the Secretary earlier. He said that he did not hear a good reason, and he considered that the Bill in its present form was already a mature and balanced proposal. If so, why did he undertake to launch the next round of consultation immediately after the passage of the Bill to respond to the demands of the various sectors? I really have a big question mark. Which words of the Secretary were serious? Was the Secretary buying time and silencing Members when he said that this was a mature and balanced proposal, but would push back the launching of the consultation after the passage of the Bill? So, President, I find the Secretary's slipshod reply very regrettable.

I said when I spoke for the first time that whatever put forward by the democratic camp would be voted down — not for any reason, simply because it came from the pan-democrats. Thus, President, in my opinion, if you can make good use of your power and invoke Rule 55(1)(b) of the Rules of Procedure to resolve the present impasse, it would be far better than having to forcefully cut off the filibuster a few meetings afterwards. Of course, President, cutting off filibuster is the power which you can maneuver, but if you regard your power as a good gun, you should exercise your power to commit the Bill to a select committee to resolve this impasse before we proceed to a vote later.

Whether it is before or after 1997, the legislature has never invoked Rule 55(1)(a) of the Rules of Procedure. This is the first time that a Member has put forward a motion to propose committing a bill which has passed the resumption of Second Reading debate to a select committee. As this is maiden, it has aroused much speculation among the pro-establishment Members. Since it is hard for me to clarify too much to them, I would rather respond to some speculations and arguments which are more specific afterwards one by one.

Now, let us first compare the different scenarios which may appear for the Bill to be committed to a select committee. We entered the Second Reading debate on 6 December but some new points emerged during this period, prompting us to think that we should step on the brake and have further discussion. For instance, during the scrutiny of the Bill, the Hong Kong Copyright Alliance (HKCA) did not clearly spell out its worries. It only began to voice out after mid-December. Through the seminars organized by community groups and the meetings with Members arranged by the Secretary, its members brought up more concerns. Thus, we consider that a select committee can act as a buffer to help us look for a solution to resolve the differences.

At the end of December and in early January, we heard the HKCA say that it would not provide evidence to help the Government make criminal prosecutions. So, we joined the academics in search for some overseas examples and came up with "civil criminal injunction". If the words of the HKCA still cannot set the netizens' minds at rest, the best solution is to include "civil criminal injunction" in the legislation. "Civil criminal injunction" means that civil or criminal prosecution will not be made against the non-commercial behaviour of individual citizens. Under such circumstances, netizens need not worry.

Mr Martin LIAO has done a lot of research. He reminds me of one thing outside the meeting — his act is not ideal as he should have pointed it out in the Bills Committee. Mr Martin LIAO perfectly understands that "civil criminal injunction" originates from America's copyright ordinance, and he can even name the number. He points out that in the United States, there is a pre-paid mechanism, their people have to join the pre-paid mechanism first to be members before they can obtain an injunction against prosecution. With Mr Martin LIAO's reminder, we learn more and can look for a solution together. Invoking Rule 55(1)(a) of the Rules of Procedure to commit the Bill to a select committee is an example. Why do we not do that?

Let me turn to discuss what we can do to make the Legislative Council operate smoother. The fact now is that the democratic camp will go to great lengths to safeguard the flow of information so that the public can disseminate copyright articles on the Internet without fear. They do not have to worry about facing criminal or civil prosecutions. However, since we insist on protecting people's freedom and rights, we must try our best to drag on to trade for time to discuss with copyright owners proposals which are mutually acceptable. Secretary, you have also done that but you are not willing to disclose in public. Of course, you may have hit a snag but if it is out of good intention, there are goals which you cannot attain while keeping a low profile. You should bring it up for discussion. If you tell us what you have done, what amendments you have considered but the interested parties are not willing to accept, public pressure will fall back on them. The Government's role is not to listen to what the copyright owners have to say. Rather, it has to protect both sides. Secretary, why are you not willing to tell more in public?

However, if there is a select committee, there will be a process to gather evidence. We can invite the Secretary to come to explain in public what amendments he has proposed to them and why they have turned them down. This will also be fairer to the government officials.

Another fact we have to face is that when the democratic camp trades time for more possibilities, some bills which have gone through scrutiny or are under scrutiny are waiting to be put onto the agenda for Legislative Council meetings. They include: Bankruptcy (Amendment) Bill 2015; Private Columbaria Bill — especially those illegal private columbaria which occupy Government land. They may now be duping people to spend over \$200,000 for one niche. We wish to regulate them as soon as possible; Property Management Services Bill — we wish to prohibit bid-rigging through refining the property management

system; Interception of Communications and Surveillance (Amendment) Bill 2015 — it seeks to increase the power of the Commissioner to listen to tapped recordings; Mandatory Provident Fund Schemes (Amendment) Bill 2015 — it seeks to lower management fees for Mandatory Provident Fund schemes; Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015 which seeks to handle electronic wastes, and Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015 which is on the recycling of glass bottles. Moreover, a few bills on taxation are also on the queue but I have not joined the relevant bills committees.

These bills are not controversial, and we all wish to see their swift passage. Therefore, for the smooth operation of the Council ... As new views on this Bill have emerged, the most appropriate approach is to commit it to a select committee which will run parallel with the Legislative Council. Once the select committee is established, apart from seeing the chance of reaching an agreement for the Bill to be passed by this Legislative Council, time will also be made available for the Council to pass timely the above-mentioned non-controversial bills which will benefit people's livelihood and which Members have spent much time to consider. Therefore, I wish that Members can support. Yet, today, I am more pessimistic than last week.

What will the situation be like if a select committee is not established? I am now totally disappointed with the Chief Secretary Carrie LAM. In fact, she is not much different from Mr WONG Kwok-hing, they both know nothing about this Bill. Yet, she exercises her power to push it through. She is pushing the people into the fiery pit. Is this fair to them? The Government opposes the setting up of the select committee simply because it can secure the majority of the votes. Even if the Committee stage is eventually reached, we will only be considering fair use and user-generated content. The Secretary has tried to convince copyright owners but they have turned him down. As such, can the Secretary still call the Bill a mature and balanced proposal?

If the officials are only banking on the sufficient number of votes they can secure from the pro-establishment Members for passing the Bill and pushing the people into the fiery pit, they are abusing their power and letting down the many people who once have expectation of Carrie LAM. Three years and six months ago, her popularity rating was the highest among the officials, but she is now showing her true self. She will be condemned by Hong Kong people.

Carrie LAM said openly on Saturday that if Members had any constructive views, she was willing to sit down and discuss with them. So, I called her office on Monday with the hope of making an appointment to discuss with her the merits of establishing a select committee and spending 10 minutes to bring up with her "civil criminal injunction" and the pre-paid mechanism mentioned by Mr Martin LIAO. I wish to convince the Chief Secretary so that she will put pressure on the pro-establishment camp and ask them to vote in favour. Yet, I found out the Chief Executive was only saying in public that she welcomed sitting down with Members for discussion. Her secretary told me over the phone that the Chief Secretary did not want any discussion. President, I am disappointed with Carrie LAM because her words and deeds do not tally. How is she different from LEUNG Chun-ying?

Now, I would like to swiftly respond to Mr MA Fung-kwok. I paid much attention to his speech, and the speeches of Mr Paul TSE and Mr CHAN Kam-lam. Mr MA Fung-kwok asked if I was not afraid of being betrayed by my allies who might filibuster. Actually, in most of the select committees, pro-establishment Members make up the majority and just as they are now, they can vote in favour of passing the Bill. However, I wish Members can put aside their differences in the select committee and put the people's interests in the first place.

When delivering his speech, Mr Paul TSE intends to respond to "civil criminal injunction" but after pointing out that the Copyright Ordinance has its own legal framework, he does not respond to "civil criminal injunction". I wish he could find a chance outside the meeting or during the Committee stage to talk about it.

Mr CHAN Kam-lam says the pan-democrats only intend to filibuster to cultivate a sense of crisis among those who do not understand the Bill. Nonetheless, in my view, the bulldozing of the Bill by the pro-establishment camp only reflects that they would like to hurriedly introduce a legislation which may land everyone into possible criminal offenses and push them into the fiery pit when they still do not understand its implication.

We have almost exhausted all resorts in the Council. It is now time for the people to come out and express their views. There will be a rally next week. I wish more people will come out to tell the Government and the pro-establishment Members their worries (*The buzzer sounded*) ... and fears.

**PRESIDENT** (in Cantonese): Ms HO, reply time is up.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Copyright (Amendment) Bill 2014 be committed to a select committee. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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

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

Functional Constituencies:

Mr James TO, Mr Frederick FUNG, Prof Joseph LEE, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Dennis KWOK and Mr IP Kin-yuen voted for the motion.

Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung,



Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms Cyd HO, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr James TIEN, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Mr SIN Chung-kai and Dr Helena WONG voted for the motion.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mrs Regina IP, Mr Paul TSE, Mr Michael TIEN, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT, Dr CHIANG Lai-wan and Mr Christopher CHUNG voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 29 were present, seven were in favour of the motion and 22 against it; while among the Members returned by geographical constituencies through direct elections, 32 were present, 16 were in favour of the motion and 15 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

## **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): This Council now continues to consider the Copyright (Amendment) Bill 2014. The meeting is now suspended until 9 am tomorrow.

*Suspended accordingly at 7.55 pm.*



## Appendix I

## WRITTEN ANSWER

**Written answer by the Secretary for Commerce and Economic Development to Mrs Regina IP's supplementary question to Question 5**

As regards the collections of works in M+ of the West Kowloon Cultural District, M+ is the new museum for visual culture in Hong Kong, encompassing the disciplines of 20th and 21st century visual art, design and architecture, and moving image from Hong Kong, Mainland China, other regions of Asia and the rest of the world. As at January 2016, M+ has acquired (through purchases and donations) around 5 000 pieces of works including the M+ Sigg Collection, which is recognized as the largest, most comprehensive and important museum-based collection of contemporary Chinese art unmatched by any other collection in China or anywhere else.

Defining and preserving the cultural uniqueness of Hong Kong is also part of M+'s mandate. M+ is putting together a collection of Hong Kong visual culture, which includes art, architectural materials, design, and cinema and moving image from Hong Kong.

M+ Collection also includes a number of large-scale, spectacular, and impressive works, such as world-renowned artist, Antony GORMLEY's Asian Field, an installation of 180 000 clay figurines that were made together with 350 villagers from Guangdong in 2003; and Kiyotomo Sushi Bar made in 1988 by the Japanese designer Shiro KURAMATA, widely regarded as one of the greatest designers in the late 20th century.

M+ will continue to acquire additional works to fulfil its goals and values, with a view to developing a collection that will encompass Hong Kong visual culture at its core, while expanding its links to the rest of the world.

We believe that M+ will attract the local public as well as tourists visiting Hong Kong and help foster the development of cultural tourism and bring in diversified experience for our tourists.