

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 23 May 2007

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

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

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

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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

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

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

**MEMBER ABSENT:**

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

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

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

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

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

**CLERKS IN ATTENDANCE:**

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**PRESIDENT** (in Cantonese): There are indeed very few Members in the Chamber today. Will the Clerk please ring the bell. I believe other Members are in this Legislative Council Building, only that they have not yet entered the Chamber.

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

**PRESIDENT** (in Cantonese): A quorum is now present. Meeting shall now start.

### **TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Fugitive Offenders (Malaysia) (Amendment) Order 2007...	82/2007
Fugitive Offenders (Suppression of the Financing of Terrorism) Order .....	83/2007
Telecommunications (Method for Determining Spectrum Utilization Fee) (Code Division Multiple Access Mobile Telecommunications Service) Regulation ....	84/2007
Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2007 .....	85/2007
Companies Ordinance (Amendment of Eighth Schedule) Order 2007 .....	86/2007
Registration of Persons (Invalidation of Identity Cards) Order 2007 .....	87/2007
Road Traffic (Traffic Control) (Designation of Prohibited and Restricted Zones) (Amendment) Notice 2007 .....	88/2007

Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007.....	89/2007
Accreditation of Academic and Vocational Qualifications Ordinance (Commencement) Notice 2007.....	90/2007
Births, Deaths and Marriages (Digital Image) Ordinance (Commencement) Notice .....	91/2007
Building Management (Amendment) Ordinance 2007 (Commencement) Notice 2007 .....	92/2007
Construction Workers Registration Ordinance (Commencement) (No. 2) Notice 2007.....	93/2007
Employment (Amendment) Ordinance 2007 (Commencement) Notice.....	94/2007
Import and Export (Fees) (Amendment) Regulation 2007 (Commencement) Notice .....	95/2007

#### Other Papers

No. 92 — Annual Report 2005-2006  
Hong Kong Broadcasting Authority

Report of the Bills Committee on Unsolicited Electronic Messages Bill

#### ORAL ANSWERS TO QUESTIONS

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

#### Rates Concessions

1. **MR VINCENT FANG** (in Cantonese): *President, in announcing this year's Budget, the Financial Secretary stated that rates for the first two quarters*

*of the current year would be waived, subject to a ceiling of \$5,000 per quarter for each rateable tenement. However, tenants of the government-run wholesale food markets have relayed to me that they have not yet received any rates concession notice from the authorities concerned. In addition, I have learnt that the Rating and Valuation Department (R&VD) will revalue the rateable values of properties in the current financial year. In this connection, will the Government inform this Council:*

- (a) whether rates are included in the rents paid by tenants of all the current government-run wholesale and retail non-staple food markets; if not, whether it is the case that the R&VD has not collected rates from such markets, or that the government departments which managed these markets have paid the rates concerned on their own; if rates are included, whether the tenants concerned will receive the above rates concession; if so, when and how the Administration will rebate the relevant sum to them, and of the circumstances under which the tenants will be denied such concession; and*
- (b) whether the above revaluation of rateable values of properties will cover wholesale and retail markets, including the markets under government departments; if so, whether according to the existing policy, the Administration will reduce the rents concerned because the revaluated rateable values of such markets are lower than the current values?*

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

- (a) At present, the rent collected by the Food and Environmental Hygiene Department (FEHD) from tenants of the public markets under the Department's purview does not include rates. The rates of the public markets are paid for by the FEHD. This arrangement is the same as that of the former Urban Council and Regional Council. As rates are excluded from the rent paid by tenants of the public markets, the FEHD does not have to make any arrangement for rebating the relevant sum to the tenants.



As for fresh food wholesale markets, all such markets under the Agriculture, Fisheries and Conservation Department (AFCD) have to pay rates, and the tenancy agreements stipulate clearly that the monthly rents are inclusive of rates. The R&VD regards each wholesale market as a single entity. According to the Financial Secretary's measure to waive rates for the first two quarters, each fresh food wholesale markets will get a waiver of \$10,000, and the three wholesale markets directly managed by the AFCD will receive a total of \$30,000 in rate wavier. In line with the AFCD's established principle in managing tenancy agreements, even if there are changes in rental costs (including the amount of rates payable) during the tenancy period, rental levels would not be adjusted immediately.

- (b) The R&VD will cover government wet markets and fresh food wholesale markets in its reassessment of rateable value of all property in Hong Kong in October this year.

For the public markets under the FEHD's purview, as I have mentioned just now, rates for public markets under the FEHD's purview are independent of the rent and are paid for by the FEHD. Therefore, whatever the result of the reassessment of rateable value may be, it will have no impact on the rent paid by the tenants of the public markets under the FEHD's purview.

As regards fresh food wholesale markets under the management of the AFCD, the Government will conduct a costing exercise every two years to determine the rents for these wholesale markets. The next round of costing exercise will commence in 2007. In conducting the costing exercise, the Government will consider all expenditure items, including payroll costs, cleansing and security services fees, maintenance expenses, depreciation rates and the prevailing rates payable, and so on, and adjust the rents according to the actual circumstances.

**MR VINCENT FANG** (in Cantonese): *The Secretary just now said that the rent collected by the FEHD from its tenants did not include rates. However, in cases like The Link REIT, rates and rents are separated for the latter are determined in accordance with the flow of shoppers and the letting rate. May I ask the*

*Secretary whether the rent payable by tenants under the FEHD's purview will be determined in this manner?*

**PRESIDENT** (in Cantonese): Mr Vincent FANG, you are now asking the Secretary in this supplementary question how the rent is determined, and yet you asked the Secretary in the main question whether the rent included rates. In what way are they, that is your main question and the Secretary's earlier reply and the supplementary question now raised by you, related?

**MR VINCENT FANG** (in Cantonese): *I was referring to other tenants, whose rent includes rates. May I ask the Secretary why rates are included in the rent paid by the tenants under the FEHD's purview?*

**PRESIDENT** (in Cantonese): Is it the case that you wish to know why the rent collected from tenants of markets under the FEHD's purview does not include rates?

**MR VINCENT FANG** (in Cantonese): *Yes.*

**PRESIDENT** (in Cantonese): You may refer to part (a) of the main reply given by the Secretary for he has already explained why this is so. May I suggest you put your question in another way and ask the Secretary whether or not there will be changes in the future?

**MR VINCENT FANG** (in Cantonese): *Yes. Thank you, President.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): I am grateful to the President for explaining for me.

I believe the FEHD will adhere to the existing mechanism in determining the rents to be collected from markets under its purview in the future. We can also see that the FEHD is still following the practice of the former Urban Council and Regional Council. I recall that the Government collected rates from the

former Urban Council and Regional Council back in the late '80s. The two Municipal Councils decided at that time to pay rates, though rates were not included in the rents. That was what they did. We are of the opinion that no special adjustment should be made concerning this at this stage. In particular, the sum is indeed very small for the tenants.

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

### **Indiscriminate Sounding of Car Horns**

2. **DR RAYMOND HO** (in Cantonese): *President, under the Road Traffic (Traffic Control) Regulations (Cap. 374G) (the Traffic Control Regulations), drivers are not allowed to sound their car horns except to warn other road users of danger. I have received complaints that many drivers sounded their car horns indiscriminately, which not only damages the serenity of the neighbourhood, easily causes traffic accidents by distracting other drivers, but might also give the visitors a bad impression of Hong Kong. In this connection, will the Government inform this Council:*

- (a) *of the basis for determining whether an individual road section should be designated as a silent zone; whether it will consider extending the scope of silent zones to cover, in particular, road sections in the vicinity of schools, residential areas and commercial areas; if it will not, of the reasons;*
- (b) *of the number of drivers prosecuted in the past three years by the police for sounding car horns indiscriminately or in silent zones; and*
- (c) *whether it will step up publicity efforts among drivers to urge them to drop the undesirable habit of sounding car horns indiscriminately?*

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

- (a) The existing Traffic Control Regulations stipulate the regulation on the use of vehicle horn by a driver:

- (i) Under regulation 43, a driver shall not use any audible warning device on a vehicle on a road except to warn any person on or near a road of danger; and
- (ii) Under regulation 3, the Commissioner for Transport may erect on a road traffic signs to prohibit a driver from using a vehicle audible warning device within a restricted area (the "silent zone"). Under regulation 59, the police may prosecute any driver who fails to comply with the traffic sign.

The use of vehicle horns by drivers on any road is already governed by the existing Traffic Control Regulations. Taking into account the need for a driver to use the vehicle horn to give warning to other persons to safeguard road safety under certain circumstances, our primary consideration in designating a silent zone is whether it is necessary to maintain a serene environment in the concerned location most of the time. At present, most of the silent zones are in the vicinity of hospitals.

We do not have any plans to extend silent zones to other places such as roads in residential or commercial areas for the time being. However, upon receipt of a proposal for designating a particular location as a silent zone, we will assess whether it is necessary to maintain a serene environment at the proposed location most of the time. We will also consult the local community.

- (b) The number of prosecutions instituted by the police under regulation 43 of the Traffic Control Regulations (that is, improper use of vehicle horns) was 81, 82 and 47 in 2004, 2005 and 2006 respectively.

We do not have the number of prosecutions instituted by the Police under regulation 59 of the Traffic Control Regulations (that is, drivers failing to comply with the traffic sign indicating a silent zone). It is because the traffic sign for silent zone is one of the over 300 traffic signs or road markings prescribed under the Traffic Control Regulations. The police do not have the breakdown of prosecution statistics related to this particular traffic sign.

- (c) All along, we are committed to educating drivers and disseminating to them road safety messages. The messages include observing

traffic regulations, maintaining a good driving attitude, be on the alert and courteous to other road users at all times.

Separately, the Transport Department (TD) has issued the Road Users' Code, which is also uploaded to the TD's website. Apart from setting out the existing statutory requirements and restrictions on the use of vehicle warning devices, the Code also gives advice on the use of a vehicle horn when the vehicle is in motion or when it stops on the road.

We will continue to instill a safe and courteous driving attitude among drivers and remind them not to sound horns indiscriminately through leaflets, road safety talks and regular meetings with the transport trades.

**DR RAYMOND HO** (in Cantonese): *In the past, many areas were designated as silent zones with road traffic signs erected. However, these road traffic signs were all removed subsequently. Nowadays, particularly in front of traffic lights, when a driver fails to move at the change of light signal in less than one tenth of a second, the driver of the car behind it will sound his horn. The problem is particularly conspicuous in commercial areas and school districts. I think this will tarnish Hong Kong's international image.*

*In part (a) of the main reply, the Secretary said that if proposals were submitted, the Government would conduct assessment basing on the situation of the district and consult the local community. In the main question, I have already said that proposals for designating school districts, commercial areas and residential areas as silent zones should be made to the Government for consideration. Will the Secretary consider and assess these proposals proactively?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): I have in fact mentioned this in the main reply earlier. At present, it is stipulated under an existing law, that is, Chapter 374G of the Laws of Hong Kong, that drivers can only use vehicle horns where necessary and are prohibited from sounding vehicle horns indiscriminately. This is part of the reason. Through education and promotion, people in Hong Kong are more restrained than people in many other cities. However, if restrictions on

sounding vehicle horns are to be extended to other areas, we must first address the proposal from the perspective of the demand of the local community. In other words, if there is such a demand, the TD will examine holistically the justification of the need and consult the local community to decide whether or not this should be done. In this connection, these proposals are handled according to the existing mechanism.

**DR RAYMOND HO** (in Cantonese): *My supplementary question is very clear. As the Secretary said in part (a) of the main reply that the Government would conduct assessment if it received any proposals, I now put forth to the Secretary a formal proposal. I urge the Secretary to conduct assessment on residential areas, commercial areas, and so on, as soon as possible and then make a final decision, or to conduct consultation to gauge the views of the public. I now put forth this proposal to the Government. Will the Secretary consider it?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Naturally, if assessments are to be conducted on all areas as you suggested, I have to deploy the resources required, but it will involve the issue of prioritization. Now that I have heard this proposal from Dr HO, I will have to examine whether there is such a call from the local community. I will then decide which area we should first deal with subject to the priorities set. For it is impossible to conduct assessment on all areas at the same time.

**MR WONG TING-KWONG** (in Cantonese): *During traffic congestions, more often than not, we hear drivers sounding their horns. However, according to the relevant legislation, unless a driver aims to warn other road users of danger, he shall not sound a horn indiscriminately. For this reason, the sounding of horns by drivers during traffic congestions seems to be a violation of the road traffic legislation. However, according to our observation of the actual situation, despite the presence of traffic policemen in the vicinity, more often than not, no action will be taken against drivers sounding horns during traffic congestion. Neither will the policemen charge those drivers, nor give them warnings. May I ask the authorities whether instructions have been given to front-line policemen to treat these drivers, who sound their horns during traffic congestion, leniently? If they have, will this not give the public an impression that laws are not being enforced?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): In the course of law enforcement, naturally, we will sometimes see that policemen do not issue penalty tickets immediately after they have discovered a violation of traffic regulations, this is particularly the case if fixed penalty tickets are involved. In issuing penalty tickets, in most cases, the police will only make arrests in more serious situations. The police will rather step up its efforts in promotion and education, as well as giving warnings. I am not saying that we should tolerate these offenders, but the emphasis of law enforcement should surely be prioritized, giving priority to violations which may directly affect road safety, cause traffic accidents and affect the smooth flow of traffic. According to regulation 43 of the Traffic Control Regulations, which provides for the improper use of vehicle horns, the provision mentioned by Mr WONG earlier, the number of prosecutions initiated in the past three years (2004, 2005 and 2006), was 81, 82 and 47 respectively.

**DR LUI MING-WAH** (in Cantonese): *For frequent road users, vehicle horns are now heard more frequently. Sometimes I think I am driving on the Mainland. The Government said that in the past three years, the number of prosecutions ranged from 40 to 80 approximately, but these figures are no reflection of the reality, for the initiation of prosecution is extremely difficult. In respect of improvement, I would like to ask the Government about the leaflets, road safety talks, and so on, mentioned in the last paragraph of part (c) of the main reply. In fact, will it be more effective to launch promotion through radio stations and television stations? For there is a better chance that the messages will be conveyed to drivers. I implore the Secretary to consider this.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): If Dr LUI really finds the sounding of vehicle horns becoming more frequent on the roads of Hong Kong, which has made our city noisier, this is surely a more serious problem, for this may tarnish the image of Hong Kong as a whole. I think his proposal on using Announcements of Public Interest, giving advice, promotion and education via the television media, is a good suggestion and we will consider it.

**MS MIRIAM LAU** (in Cantonese): *It is a pity that the warning device of a vehicle is improperly used as a scolding means. On the road, if a driver is*

*dissatisfied with the driver of a nearby vehicle, he will usually sound his horn to express his anger. It is indeed a pity. But the number of prosecutions initiated in this respect is low. The crux of the problem indeed lies in the driving attitude of drivers. Therefore, may I ask the Secretary, apart from the policies and measures mentioned in the last paragraph of part (c) of the main reply, whether she will consider including the regulation of the use of vehicle horns in the curriculum of the Driver Improvement Scheme to make this an important point which participants of the scheme must learn?*

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

(in Cantonese): Ms LAU has raised a question in reality. Many people use vehicle horns to express their anger, for they think that other people will not know their anger if they do not do so. Such behaviour is unacceptable either as a matter of politeness, or in a civilized society like ours. We thus hope that Ms LAU's proposal can be included in the curriculum of driver training and improvement courses, so that drivers will be reminded of the use of vehicle horns and good driving manners.

**MISS TAM HEUNG-MAN** (in Cantonese): *Last Sunday, this problem emerged in my district. I know from the earlier response of the authorities that the number of prosecutions was very low. As drivers sounding vehicle horns will leave the scene after doing so, may I ask the Secretary whether the extremely low figures in prosecution reflects the fundamental difficulties encountered in law enforcement? Should this be attributed to the fact that drivers sounding vehicle horns indiscriminately can simply leave the scene? To address this problem, what measures will the authorities adopt in law enforcement?*

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

(in Cantonese): Regarding law enforcement, for the issue of fixed penalty tickets, the police can do so even if the driver has left the scene, for the police can simply jot down the licence number of the vehicle concerned, but this has to be done by the police. However, as I said earlier, the police may accord priority to incidents affecting road safety or the smooth flow of traffic. How many policemen can the police deploy on the road especially to arrest drivers using vehicle horns improperly? If such cases are discovered by policemen on patrol, it is a different matter. It will surely be more effective to appoint a



special team to perform the task, but this involves the issue of manpower. However, since so many Members consider the situation has worsened, we will conduct a review to examine the possibility of enhancing the efficiency of law enforcement, for this can after all act as a deterrent. With regard to the deployment of manpower, we have to sort this out with the police and examine whether we can do more in this respect.

**PRESIDENT** (in Cantonese): We have spent more than 15 minutes on this question. Last supplementary question.

**MR LAU KONG-WAH** (in Cantonese): *In part (b) of the main reply, the Secretary mentioned the figures for the past three years. May I ask about the percentage of successful prosecution despite the low figures and whether the level of penalty imposed can serve as a deterrent or not?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): The figures mentioned by me earlier are cases related to fixed penalty tickets, so all the prosecutions are successful.

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

### **Security Loopholes of Wi-Fi Internet Access**

3. **MR JASPER TSANG** (in Cantonese): *President, it has been reported that serious security loopholes are found in the Wi-Fi wireless Internet access service provided in some local venues. So long as hackers are equipped with suitable software, they may intrude clandestinely to steal the Wi-Fi web surfers' information and the contents of their instant messages. In this connection, will the Government inform this Council:*

- (a) *whether it has discussed with network providers of Wi-Fi service and managers of venues where such service is provided how to prevent the service users' information and the contents of their instant messages from being stolen; if it has, of the details; if not, whether it plans to follow up the matter;*

- (b) *whether it has plans to step up publicity and education to remind the public of the risks of using Wi-Fi Internet access; if it has, of the details; if not, the reasons for that; and*
- (c) *how the Government safeguards the service users' information against theft when providing Wi-Fi service in its venues?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, "Safety Net" is an issue that all Internet service providers and users must manage and pay attention to. Information security is a key focus area of the Digital 21 Strategy. All along, the Government has been promoting public awareness of information security through various channels, including the one-stop information security portal (the "InfoSec" at <[www.infosec.gov.hk](http://www.infosec.gov.hk)>), community events, forums, radio broadcasting, TV episodes and leaflets. Through these promotional activities and facilities, we educate citizens and the industry on associated security risks of the Internet, how to implement precautionary measures so as to alleviate the risks in using Internet, and prevent system from being hacked and information being stolen by hackers.

Regarding the question asked by Mr Jasper TSANG, my reply is as follows:

- (a) The Office of the Telecommunications Authority (OFTA) has followed up the case reported with the corresponding service suppliers and required them to provide effective security measures for ensuring effective delivery of their clients' information, freeing from the threats of hackers. The OFTA will consult relevant licensees with a view to setting up industry guidelines and code of practice and will also request them to conduct regular security audit for their systems to ensure that the services provided meet the security requirements set by the industry guidelines and code of practice.
- (b) We will strengthen the promotion of information security to the public through existing promotional programmes and channels mentioned above. In later this year, we will also launch a series of publicity and promotional activities, for example, dissemination of leaflets, conduct of road shows, and so on, to educate citizens on the necessary security knowledge for the use of public Wi-Fi services. Examples of such knowledge include the risk of Internet access;

security measures required for using Wi-Fi services; and proper ways of using the Internet.

- (c) We will engage relevant service providers from the market to provide Wi-Fi services at government premises. We will specify the security requirements in the tender document to ensure that the contractors will provide the necessary hardware, software and technology with appropriate security features in delivering the required services. We will require service providers to provide various security measures so as to ensure that user data will not be stolen by others. These measures will include encryption, intrusion prevention and detection systems, filtering software, and so on. We will also engage security consultants to perform security risk assessment on the Wi-Fi network designs, and conduct security audit after the networks have been put into full operation to ensure that the services provided meet our security requirements.

**MR JASPER TSANG** (in Cantonese): *President, the Secretary mentioned in his main reply that the OFTA had followed up the case reported with the corresponding service providers and required them to provide effective security measures. We do not know when the case has been followed up and according to what is said there, at least the authorities do not know presently whether or not Wi-Fi wireless Internet access service provided in various venues by these service providers or suppliers do have effective security measures. May I ask the Secretary if the authorities have any target to require all venues providing such services to have such security measures by a certain time? If this target is not yet achieved, how can special reminders be given to those Internet users in venues not fitted with security measures to pay attention to the risk that their information may be stolen?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): *President, the OFTA has indeed followed up the case with the corresponding service providers. Let me perhaps explain in greater detail. As operating Wi-Fi wireless Internet access service requires a special type of licence and there are no security requirements listed under such a type of licence, I have said in the main reply that we will follow up the case with the relevant licensees with a view to drawing up industry guidelines and a code of practice. About these industry guidelines and code of practice, since the Government will provide*

Wi-Fi service this year and our tender document will list the security requirements, so we expect that these two activities would complement each other. We hope that a code of practice on security matters can be worked out with the licensees this year.

**MR SIN CHUNG-KAI** (in Cantonese): *Secretary, part (a) of the main reply talks about informing people. The Secretary is now saying that guidelines would be drawn up. Would service suppliers be required in the guidelines to issue warnings about the Wi-Fi services they provide? This is because the best kind of publicity is to issue a warning to the users as they use the relevant service. This is actually a question of risk. If we browse or read the newspapers, or if we engage in Internet banking service in a public place, the risk will certainly be higher.*

*So security measures provided must be commensurate with the risk posed. Security measures must be tight if high-risk activities are conducted. Should there not be some appropriate warning? Has the Secretary asked the OFTA to include mandatory lines such as "Internet access incurs a risk of information leakage", and so on, in this kind of licence, like "Smoking is dangerous to health" in other products?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, that is right. We will consider the suggestion made by Mr SIN just now and add that to the code of practice for the licensees. What can even be done is that before the guidelines and code of practice are drawn up, the service suppliers can deal with the reminders in the meantime first.

**DR KWOK KA-KI** (in Cantonese): *President, while the Government is putting in great efforts to promote the use of Wi-Fi, Internet safety is also very important. May I ask the Government, according to the assessment which it has made, how great the risk of theft of data or unauthorized access by hackers is? How would this affect the Government in its choice of service suppliers or in its promotion schedule?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, as Mr SIN Chung-kai has said earlier, there is a certain

risk to Internet access. Therefore, I have stressed in the main reply that we will specify the security requirements in the tender document for the provision of public Wi-Fi services. We will also conduct security audit after the networks have come into full operation. We have not conducted any of those so-called comprehensive risk assessments of Wi-Fi Internet access yet, but we have approached the relevant service suppliers to follow up on the issue of enhancing security.

**DR KWOK KA-KI** (in Cantonese): *President, what I am asking is precisely this most important question. How great is the risk involved? The Secretary has not conducted any comprehensive assessment. However, according to the preliminary assessment conducted by the Government, how great is the risk involved?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, I have just said that no comprehensive assessment has been conducted yet and I do not think that any comprehensive assessment is all that necessary. The most important thing is that we must liaise with the relevant service suppliers and ask them to strengthen the security system in this regard and to remind users of the risk of Internet access.

**MR JASPER TSANG** (in Cantonese): *President, the Secretary said there are plans to promote information security and educate the public on that. May I ask the Government if it has done nothing at all in this regard? If publicity or educational activities have been held, has any assessment been made on their results? Can the authorities use these plans which have been carried out before as a basis for assessment to decide how publicity activities should be held in the future and how improvements should be made?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, as I have said in the main reply, we have been engaging in promotional and educational activities through various channels such as the television and the radio. We also organized talks in some large-scale exhibitions such as the International Information & Communications Technology Expo 2007. We have assessed these publicity activities and the result is on the

whole good and user awareness of information security has been enhanced. I have also mentioned in the main reply that as we plan to offer Wi-Fi services, many people will use Wi-Fi wireless Internet access in government venues. We therefore think that publicity should be strengthened. We have set aside some funding for this purpose in our budget to step up publicity on this. We will continue with our previous approach, that is, while publicity and educational efforts are being made, their effectiveness will always be evaluated.

**MR SIN CHUNG-KAI** (in Cantonese): *President, I would like to follow up part (c) of the main reply in which the Secretary said that security consultants will be engaged to perform security risk assessment on the Wi-Fi network designs. May I ask whether there are any plans to engage independent ethical hackers to conduct independent tests? Is this included in the Government's budget? If not, would consideration be made to include this?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, we will consider taking this proposal forward.

**MISS TAM HEUNG-MAN** (in Cantonese): *The Government said in part (c) of the main reply that security audit would be conducted to ensure security. After such an audit is conducted, at which stage will security measures be improved? If it is found in the audit report that the problem is very serious and there are big loopholes in security, how would the Secretary make arrangements in the relevant procedures to ensure that security is improved?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, when we are to provide services, we have these so-called security systems and procedures in place. A security audit will only look into the question of whether or not the existing procedures and measures are adequate. Should the security audit report show that improvements are necessary, we will certainly follow up the recommendations made in the security audit and consider adopting better measures.

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

**Financial Position of Hong Kong Disneyland**

4. **MISS TAM HEUNG-MAN** (in Cantonese): *About the financial position of the Hong Kong Disneyland (the park), a joint venture between the Government and The Walt Disney Company (Walt Disney) of the United States, will the Government inform this Council:*

- (a) *of the projected and actual financial figures of the park, including attendance, revenue generated from patronage and shops as well as the profit and loss situation, since its opening in September 2005;*
- (b) *as a revolving credit facility of a sum of about US\$300 million for the park has to be reviewed in September this year in accordance with the park's financial performance, of the progress of the discussions between the Government and Walt Disney about the future financing arrangement for the park, the financing options being considered as well as whether it has been confirmed that there is no need for injection of public funds; and*
- (c) *whether the Government has discussed expediting the expansion plan of the park or taking other measures to improve the financial position of the park with Walt Disney; if it has, of the details; if not, the reasons for that?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, Hong Kong Disneyland is a long-term investment and an important component of our tourism infrastructure. It helps develop Hong Kong into the premier destination for family tourists in the region. Between 2004 and 2006, the number of family tourists has increased by 10%, whereas the number of tourists aged below 16 has increased by 35% over the same period.

Regarding the financial position of the park, while the Government and Walt Disney invest jointly in the park, the Government, being Walt Disney's investment partner, has to respect its mode of operation under commercial principles so that its interests will not be compromised as a result of the disclosure of commercially sensitive information, including attendance, revenue generated from patronage and shops as well as the profit and loss situation, and

so on. As an international commercial centre, we must respect the right of a business organization to protect its commercially sensitive information.

Since its opening in September 2005, the park's management has been improving its marketing strategy, enhancing operational efficiency and strengthening co-operation with the travel trade, having regard to demand in Hong Kong and the Mainland as well as its operational experience. In fact, the park exchanges from time to time market data with the travel trade and the Hong Kong Tourism Board. It has launched with them joint promotions focusing on the mainland market, including placing more television, online and local advertisements, in order to reach more source markets, especially to potential visitors in Southern China. The park also launches promotion offers to attract visitors, for example, through the special hotel and Annual Pass packages launched during the New Year and the travel package offered jointly with Cathay Pacific and Dragonair, and so on.

On expansion, both the Government and Walt Disney agree that there is a need to continue to add new attractions and facilities to the park in order to attract more visitors. The scope and pace of expansion will take into account market demand and feedback. The three new attractions launched last summer, including Autopia, UFO Zone and Stitch Encounter, are well received by the visitors. In 2007 and 2008, the park will open three more new attractions, including the Disney's classic "it's a small world". All these new facilities do not require additional investment from the Government. We understand that the public and tourists expect more new attractions and facilities in the park which will help attract more local and overseas visitors, particularly family tourists. The park will spare no effort to achieve this goal.

**MISS TAM HEUNG-MAN** (in Cantonese): *President, from the draft main reply provided to us by the Secretary, it can be seen that he has omitted two paragraphs and has not read them out. President, why did the Secretary not read them out?*

**PRESIDENT** (in Cantonese): Miss TAM Heung-man, according to our rules, this main reply is only a draft.

**MISS TAM HEUNG-MAN** (in Cantonese): *Fine, I see.*



**PRESIDENT** (in Cantonese): The reply given by the Secretary in the meeting of the Legislative Council prevails.

**MISS TAM HEUNG-MAN** (in Cantonese): *President, thank you for your clarification on this point.*

*President, I wish to follow up part (b) of the main question concerning the financing arrangement between the Government and Walt Disney and the progress of the discussion, since the Secretary did not give any reply on these matters. Can the Secretary give us a reply in order to give us greater peace of mind? Because we are concerned about whether it is necessary for the Government to inject more funds and if it is necessary, how much money is involved? Since the Secretary has left out the last two paragraphs of the main reply, he did not reply as to whether more public funds are needed due to concerns about the operational situation of the park, that is, the so-called cash flow problem. If it is really necessary to use more public funds to save the park, the public and Members will all be very concerned. However, the Secretary has left out the last two paragraphs of the main reply and this is even more disconcerting because one of the sentences therein says that no additional public funds will be required and this is exactly our concern. Therefore, I call on.....*

**PRESIDENT** (in Cantonese): Miss TAM, perhaps you can put your supplementary direct.

**MISS TAM HEUNG-MAN** (in Cantonese): *I wish to ask the authorities to respond to my supplementary on whether or not it is necessary to increase the funding.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): In order to meet the needs of the park in its operation and development, we will discuss the relevant financial arrangements with Walt Disney. At present, the Government does not have any plan to use public funds to increase its investment in the park. I wish to stress that we do not have any plan to inject more funds.

I believe Members are all aware that if we want to inject more funds, we have to come to the Legislative Council to give Members an account. I reiterate that we do not have such an intention. However, we will be happy to consider any proposal on financial arrangement put forward by Walt Disney.

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

**MISS TAM HEUNG-MAN** (in Cantonese): *No. President, concerning the proposal mentioned by the Secretary just now, I have also asked about the particulars of its progress, what the financing proposals are and the relevant details in my main question. Can the authorities provide more information on the financing proposals?*

**PRESIDENT** (in Cantonese): Miss TAM Heung-man, I heard the Secretary say that there was no request for financing, so there was not any proposal.

**MISS TAM HEUNG-MAN** (in Cantonese): *OK, that is fine.*

**MR ANDREW LEUNG** (in Cantonese): *President, the Secretary said in the main reply that in 2007 and 2008, three more new attractions will be added to the park and I wish to ask about the progress in this regard. Can these new attractions be opened on the 10th anniversary of Hong Kong's reunification, so as to attract more visitors?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): I thank Mr LEUNG for his question.

Apart from the three new game attractions that have already been added, three new attractions are being built in the park, including Disney's classic "it's a small world". However, this attraction can only be opened in April next year but it is possible that the other two attractions, namely, Mickey's Waterworks Parade and Animation Academy, can be open in the second half of this year.

**MR DANIEL LAM** (in Cantonese): *The Secretary said that there would be several new facilities in the expansion plan, however, can the Secretary tell us what extensive promotional effort the Government will make after the completion of these facilities, so that people will know that the park has received a facelift and more visitors will be attracted to it?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Thank you, Mr LAM.

In fact, the park has been opened for just more than a year and it is aware that it has to organize various activities having regard to the demand in Hong Kong and the Mainland. Members can also see that many new activities have been introduced in the past few months, including Halloween party, "Disney's Chinese New Year", "903 Disney Attack" organized jointly with Commercial Radio and the latest "Pirate Takeover at Hong Kong Disneyland". In addition, promotional efforts using DVDs has also been launched to highlight the attractions in the park. After watching the DVD, visitors will know how they can have even more fun in the park.

In addition, the park has also stepped up promotions on the Mainland and it also works hand in hand with the travel trade. As I have said, the park exchanges from time to time market data with the Hong Kong Tourism Board and has launched promotions focusing on the mainland market, including placing more advertisements in such media as the television and publications. In addition, it will also attract more visitors by means of the new activities I have mentioned. I trust Members have also learnt about them on television.

**MR ABRAHAM SHEK** (in Cantonese): *President, I am very pleased to see the Secretary's response to part (b) of Miss TAM Heung-man's main question, that is, the information concerning financing and the financial situation. It upholds the respect for the spirit of contract in Hong Kong as a member of the international community.*

*The Secretary said in the fourth paragraph of the main reply that new attractions would be added in 2007 and 2008. May I ask the Secretary if the Government and the park have any longer-term planning that extends beyond 2008?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): I thank Mr SHEK for the question.

The park has been in operation in Hong Kong for just over one year but in the past year, however, three new attractions have already been added, including Autopia, UFO Zone and Stitch Encounter. They are all quite good and I hope Members will also visit the park.

The most popular attraction is of course "it's a small world". I have said in reply to Mr Andrew LEUNG's supplementary just now that the construction of this attraction is in full swing and it will probably be opened in April next year. In addition, there are also two other attractions, that is, "Mickey's Waterworks Parade" and "Animation Academy". In other words, in the short span of just over a year, there are six new attractions and facilities.

Of course, the park will continue to pay attention to the demand and tastes of the market and it has also conducted questionnaire surveys to gauge what additional attractions and facilities visitors want. Members are all aware that reclamation is being carried out to the east of the park and this new piece of land can also be used for Phase 2 expansion. If there is such a need in future, further expansion will be possible.

**MR FRED LI** (in Cantonese): *President, the Secretary pointed out in the first paragraph of the main reply the increase in the number of family tourists, including the increase in the number of tourists aged below 16. I think he wanted to hint that a lot of people have visited the park. However, he also said that the attendance was commercial information that had to be protected.*

*President, several years ago, when we approved the funding for the investment plan for the park involving government participation, we said that in terms of the proportion of the resources committed, we are footing most of the cost while the other party is contributing only a peanut. President, it was stated clearly in the papers at that time that the first-year attendance of the park would be 5.6 million people, so that is an established target according to which we can determine whether the target has been attained. Of course, in the end, it could not be achieved but the shortfall was small.*

*However, although the Government subsequently said that the attendance had to be kept confidential, it could tell us the target attendance for the first year.*

*May I ask the Secretary whether it is because the target for the first year could not be achieved that it subsequently said the expected attendance would not be discussed in future, so as to avoid further criticisms? Is it for this reason that the information in this regard subsequently became commercial secret and the attendance will never be discussed again?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): I think this is not so. I believe Mr LI is also well aware that all along, we have been making accounts to the Panel on Economic Services of the Legislative Council and we do so several times a year. I believe Mr Fred LI also remembers that we have also invited the representative of the park to such meetings before.

I believe the most important thing is that, as Mr Abraham SHEK pointed out in his supplementary, we have to abide by the law when taking action. Moreover, we can publicize certain sensitive information only after getting their consent. In fact, we also hope that transparency can be enhanced, therefore, the information on the attendance of 5.2 million people in the past year was published with the consent of the park. We think that this development is a positive one and we will continue to relate the relevant progress in this regard to Members in the meetings of the Panel on Economic Services.

**MR FRED LI** (in Cantonese): *President, the Secretary has not answered my supplementary because I am asking why it was possible to tell us the expected attendance at that time but he said that the expected attendances in the second and third years were commercial secrets. The Secretary has not answered this part of my question. If the Secretary does not answer this, it is useless for him to come to the meetings of the Panel on Economic Services, no matter for how many times.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): I think what Mr Fred LI asked is another matter altogether. Of course, we have the figures on what he calls the estimated revenue. However, concerning the expected and actual attendances of the park after it came into operation, as I have said in the main reply, this is commercial information that we have agreed to protect, that is, we will not disclose it without the consent of Walt Disney.

However, I have revealed that in the past year, the attendance of the park was 5.2 million people and this shows that we also want to enhance transparency.

**MR VINCENT FANG** (in Cantonese): *President, the Secretary said in the main reply that the operation of the park was not very satisfactory and one of the reasons is the rather small size of the park. May I know if the Government will hold discussions with Walt Disney on expediting the expansion plan, so as to attract more visitors? In addition, will the Government build other facilities on Lantau Island to make it more attractive?*

**PRESIDENT** (in Cantonese): Mr Vincent FANG, you have asked two supplementaries. I think your second supplementary is not relevant to the main question. Perhaps I will ask the Secretary to reply to the first supplementary, all right?

**MR VINCENT FANG** (in Cantonese): *Yes, the Secretary needs only answer my first question.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Thank you, President. Mr FANG was right in saying that we had conducted a questionnaire survey and the respondents include people who had been to the park and those who had not. Some people thought that the size of the park is rather small and they were concerned that there were not enough attractions. In view of this, the park has recently produced a DVD specially to introduce in detail many of the attractions in the park.

In fact, I have already said many times in reply to Members' supplementaries that regarding the adequacy of facilities, which is a concern voiced by Mr FANG, the park has kept adding a lot of new attractions and facilities. In the past year and in the coming months, six new facilities will be completed or are already in use. We will continue to pay attention to this area. Furthermore, as I said just now, the reclamation will be completed in 2008. On the question of whether the facilities in Phase 2 will be constructed, this will depend on the questionnaire survey being conducted by us. Walt Disney attaches great importance to all of these.

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

**MR HOWARD YOUNG** (in Cantonese): *President, I learnt from the news report yesterday that the Universal Studios would establish a theme park in Korea. I have always been of the view that Los Angeles and Walt Disney are a good match.*

*The Secretary said in the fourth paragraph of the main reply that the discussion with Walt Disney was about adding new facilities to the park, so is this a framework? Is it the case that the Secretary can only explore with Walt Disney the expansion of facilities in the park? According to the comments he made just now, the land next to the park has nothing to do with the park, so will it be subject to other limitations, thus making it a no-go area that cannot be explored?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Mr YOUNG, I think it depends on your viewpoint.

As I said just now, reclamation is being carried out to the east of the park and it is reserved for Phase 2 development. If there is such a need in future, Phase 2 development can be carried out.

However, from a broader perspective, as Mr Vincent FANG asked just now, is it possible for us to do more on Lantau Island and add more scenic spots to attract more visitors? For example, when visitors go to Lantau Island for pleasure trips, apart from including the park in their itinerary, they can visit more places in a day. In this regard, many new tourist attractions have been added to Lantau Island, including the Ngong Ping 360, which Members are familiar with, as well as the Wisdom Path, the Temple of Ten Thousand Buddhas in the Po Lin Monastery, and so on. In addition, we will also beautify the Di Tan outside the monastery to attract more visitors.

All in all, President, we will beef up the tourism facilities on Lantau Island and add more tourist spots in the hope of attracting more visitors to visit Lantau Island for pleasure or to include the park in their trips.

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

## Universal Suffrage Proposals

5. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, the Secretary for Constitutional Affairs has indicated that the Government will set out in the green paper on constitutional development the views put forth by the Commission on Strategic Development (CSD) and the community on the options for implementing universal suffrage. He has also pointed out that the proposal for universal suffrage should satisfy five conditions, which include being consistent with the Basic Law, not requiring any amendments to the main provisions of the Basic Law, having majority support among Hong Kong people, securing two-thirds majority in the Legislative Council, and being considered seriously by the Central Authorities. In this connection, will the Government inform this Council:*

- (a) *whether the condition that the proposal for universal suffrage should not require any amendments to the main provisions of the Basic Law is set on the basis of the instruction of the Central Government or the Chief Executive; if neither is the case, of the legal basis for setting such a condition;*
- (b) *of the meaning of "being considered seriously by the Central Authorities" which is among the above five conditions, and how the public know the circumstances under which the proposal concerned will or will not be considered seriously by the Central Authorities; and*
- (c) *given that during the CSD's discussion on the possible models for selecting the Chief Executive by universal suffrage, more members supported using the composition of the Election Committee as a basis for considering the composition of the nominating committee for the Chief Executive candidature; whether the Government has studied if such a composition method will deprive the general public of their nomination right, and will thus be inconsistent with Article 25 of the International Covenant on Civil and Political Rights (ICCPR); if it has, of the results of the study; if the study results show that such a composition method is consistent with the relevant requirement, of the justifications for that?*

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



- (a) It is the consistent position of the Government of the Hong Kong Special Administrative Region (SAR) that amendments to the Basic Law should not be lightly contemplated. According to Article 62 of the Constitution of the People's Republic of China, the systems to be instituted in special administrative regions shall be prescribed by the National People's Congress (NPC). In accordance with Article 31 of the Constitution, the NPC enacted the Basic Law for the HKSAR in order to manifest the "one country, two systems" and the full implementation of the basic policies of the People's Republic of China regarding Hong Kong. Hence, any options for implementing universal suffrage must comply with the provisions of the Basic Law.
- (b) Regarding the criterion that any universal suffrage options put forth should stand a good chance of being considered seriously by the Central Authorities, this requirement actually reflects the provisions of the Basic Law itself. According to Annexes I and II to the Basic Law, apart from securing support from two-thirds majority in the Legislative Council and obtaining the consent of the Chief Executive, any amendments to the two electoral methods have to be reported to the Standing Committee of the National People's Congress (NPCSC) for approval or for the record. Therefore, only those universal suffrage options which stand a reasonable chance of securing consensus among the three parties, namely, the Legislative Council, the Chief Executive, and the Central Authorities, are practicable options.

If we can achieve consensus within the Hong Kong community on the option for implementing universal suffrage in accordance with the Basic Law by following the principles of gradual and orderly progress and meeting the actual situation in the HKSAR, we believe that the option will be considered seriously by the Central Authorities.

- (c) When the ICCPR was applied to Hong Kong in 1976, a reservation was made not to apply Article 25(b) in so far as it might require the establishment of an elected Executive Council or Legislative Council in Hong Kong. This reservation continues to apply.

The ultimate aim of universal suffrage for Hong Kong's constitutional development originates from the Basic Law, and not

the ICCPR. Article 45 of the Basic Law has already stipulated that, when implementing universal suffrage for the Chief Executive, the Chief Executive shall be elected by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, part (c) of my main question asks whether the nominating committee for the Chief Executive election has violated Article 25 of the ICCPR concerning universal suffrage. So, the Secretary's reply that when the British Government became a signatory to the ICCPR, a reservation was made not to apply the requirement of the establishment of an elected Legislative Council or Executive Council does not correspond to my question because my question is about the Chief Executive election. The Secretary's reply is therefore irrelevant, not answering my question at all.*

*Since Article 25 of the ICCPR applicable to the SAR does not contain any reservation on the Chief Executive election, I hope the President can invite the Secretary to answer my question clearly. If an 800-member nominating committee serves as the basis for considering the Chief Executive candidature, will the composition of such a nominating committee deprive the general public of their nomination right? Has the Government conducted such studies? Because I think depriving the people of their nomination right is a breach of Article 25 of the ICCPR. I hope the Secretary can tell us clearly whether it is a breach. If not, why not? I am now talking about the Chief Executive, not the Legislative Council or Executive Council.*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I have in fact answered Mr LEUNG Yiu-chung's question. The implementation of the election of the Chief Executive and the Legislative Council by universal suffrage is entirely based on the provisions of the Basic Law, rather than originating from the ICCPR. According to Article 45 of the Basic Law and the relevant provisions, the Chief Executive candidate should win the support of three parties when universal suffrage is implemented in future: first, the support of members representing different sectors and strata in the nominating committee; second, the support of registered voters by universal suffrage of "one person, one vote"; third, the appointment of the Central Government after election. The status of the Chief Executive, who is formally

returned through these three stages and appointed, is totally legitimate and constitutional.

At this stage, Madam President, we are still listening to the views of the community in respect of the composition of the nominating committee and the arrangements for the election of the Chief Executive by universal suffrage. The SAR Government has not come to a conclusion regarding the composition of the nominating committee for the Chief Executive candidature.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, the Secretary has not answered my question. According to Article 39 of the Basic Law, the ICCPR remains in force. Now I am talking about the point that it remains "in force". But in his reply, the Secretary insisted that the Executive Council and the Legislative Council were exempted from the requirement or provision. I would like to ask the Secretary a question clearly: Regarding the reply just now, which provision has specified that the Chief Executive election can be exempted? The Secretary has not answered this question. I hope he can give us a clear answer as to whether it is a breach of the ICCPR.*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, let me repeat my reply to Mr LEUNG Yiu-chung's question once more. A reservation has been made such that Article 25(b) is not applied to Hong Kong. So, under Article 39 of the Basic Law, the ICCPR remains in force in Hong Kong, meaning that provisions which are applicable to Hong Kong will continue to apply. But Article 25(b) stipulates that some provisions are not applicable to Hong Kong.

**MR ALBERT HO** (in Cantonese): *I hope the Secretary can clearly explain to us why Article 25(b) of the ICCPR applies to the Chief Executive election. If the ICCPR does not apply to the election of the Chief Executive, no reservation will apply. In that case, why is it that under Article 39 of the Basic Law, the ICCPR is not binding to ensure that the election of the Chief Executive should comply with Article 25?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, my reply is very clear. The implementation of the election of the

Chief Executive by universal suffrage is entirely on the basis of the Basic Law. A reservation was made when the ICCPR was applied to Hong Kong in 1976. And this reservation continues to apply.

**MR ALBERT HO** (in Cantonese): *Why is Article 25(b) applicable to the election of the Chief Executive? The Secretary is now sidetracking, instead of answering this question.*

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): President, I have made my position clear. I do not have anything to add.

**MS EMILY LAU** (in Cantonese): *President, the Secretary said that one of the conditions for implementation of the election of the Chief Executive by universal suffrage is being considered seriously by the Central Authorities. Recently many have leaked information that it is necessary to have communication with the Central Authorities on whether the list of candidates is acceptable, apart from gaining the general support of the nominating committee as a whole before nomination can be made. President, may I ask the Secretary whether such proposals have been absorbed into the future options or not? Is such an approach a violation of the ICCPR and the Basic Law concerning the stipulation that Hong Kong people shall enjoy the right to universal suffrage?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): President, as we are still listening to the views of all quarters in the community at this stage, the options for the election of the Chief Executive by universal suffrage have not been finalized. Nevertheless, we have received suggestions from various political parties and groupings and individuals in the past 18 months. In the green paper on constitutional development to be published later, three sets of options will be listed after summing up different views for public discussion. In summing up these views, we hope that, first, the coverage will be wider; second, discussion can be facilitated to reach consensus; third, no options will be ruled out at this stage, except those inconsistent with the Basic Law.

At this stage, regarding the nominating committee and the nomination procedures, I think there are views and problems in two aspects which require further discussions and studies. The first aspect is about how to form a nominating committee with a wide representativeness such as the inclusion of the representatives of what kinds of organizations, what kinds of industries and what kind of strata. This is the first set of questions. The second set of questions is about how to nominate the candidates through a democratic procedure, the number of candidates, the proportion and how the nominating committee as a whole should operate. All these questions are now under discussion. So, we are willing to absorb different views which will then be reflected in the green paper for the people's consideration. For instance, regarding the nomination threshold, some suggest that the current threshold of 1% of the Election Committee should be maintained, some consider that it should be lowered to one twelfth and some propose to lower it to one tenth. On the contrary, some propose to raise it to one quarter. So, this is a stage like all flowers in bloom. I hope that when we have found the mainstream view, all things will go in one direction.

**MS EMILY LAU** (in Cantonese): *President, the Secretary has not answered my question. I asked whether the criterion of being seriously considered by the Central Authorities includes the possibility of screening out candidates who are not accepted by the Central Authorities through a screening or pre-election mechanism and whether such a criterion will be included in the green paper in future and whether this may violate the principle of universal and equal suffrage as promised in the Basic Law and the ICCPR?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): President, as I said just now, the implementation of the election of the Chief Executive by universal suffrage in accordance with the Basic Law will require the candidates to go through arrangements in three aspects. The first hurdle they have to overcome is to win sufficient support in the nominating committee according to the future arrangement in order to obtain legitimate nomination. To overcome the second hurdle, the candidates should win the registered voters' support through universal suffrage of "one person, one vote". The third hurdle for the elected candidate to overcome is to gain the appointment of the Central Government according to the Basic Law. All these arrangements are made on the basis of the Basic Law provisions.

**DR FERNANDO CHEUNG** (in Cantonese): *The ICCPR is in fact regarded by its member states as the conditions of basic human rights. Both Hong Kong and China are signatories to the ICCPR which has been included in the Sino-British Joint Declaration and the Basic Law. However, our SAR Government has invoked the reservation made in the colonial era in 1976 despite the fact that the relevant explanation has been clearly rejected by the United Nations Commission on Human Rights. May I ask the Secretary whether a reservation has to be made concerning our explicit request for universal and equal suffrage before enacting a law to prevent the implementation of universal and equal suffrage and telling the international community that such a law has been enacted which will prevent us from complying with the ICCPR and thus it is not necessary to maintain universal and equal participation? Do you mean that?*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, Dr CHEUNG's supplementary question actually involves a very wide range of issues. First, he mentioned that international covenants applicable in various aspects before the reunification have remained in force after 1997. In fact, we had made a lot of efforts before the reunification in 1997 to enable around 200 international covenants and multilateral treaties to continue to be applicable in Hong Kong. The Basic Law also stipulates that the ICCPR will remain in force in Hong Kong. However, all these multilateral treaties applicable in Hong Kong have laid down some criteria in terms of international law. So, according to these principles and conventions, the reservation made in 1976 remains in force. Despite that, there will be arrangements for the election of the Chief Executive and election of the Legislative Council by universal suffrage because the Basic Law, our constitutional instrument, has set a very clear target that universal suffrage will be ultimately implemented after the reunification.

Regarding the implementation of universal suffrage, we have had extensive discussions in the Commission on Strategic Development in the past year or so, apart from explanation to the Legislative Council Members. The international criterion of universal suffrage is being universal and equal which is agreed by all. So, what we have to continue to discuss is some substantial and detailed questions. Concerning the election of the Chief Executive by universal suffrage, we have to discuss the composition of the nominating committee and the democratic procedures through which nomination is made after the setting up of such a committee. Regarding the Legislative Council, discussion is on how to replace the existing election methods of the functional constituencies. So, as

we have already come to these detailed questions, the community may engage in a much wider discussion and study in order to achieve a consensus in the next stage when the green paper on constitutional development is published.

**DR FERNANDO CHEUNG** (in Cantonese): *President, just now I asked the Secretary whether we should keep the pace of implementing a universal and equal suffrage. The Secretary agreed. However, since he also agrees to it, why do we have a reservation? I hope the Secretary can answer it clearly. If there is a reservation, it means that he holds different opinions. Am I right? I would like to ask the Secretary whether or not he disagrees to it.*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): *Madam President, the legal and constitutional basis of implementing universal suffrage in Hong Kong is the Basic Law.*

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

**MR LEE CHEUK-YAN** (in Cantonese): *One of the key points of today's question is how to interpret the phrase "seriously considered by the Central Authorities" and the public should understand what the Central Authorities think. Recently, it was widely reported that some authorities in Beijing or those who are close to the Central Government had mentioned that a communication mechanism is a prerequisite for the election of the Chief Executive by universal suffrage. Secondly, the nomination by the nominating committee as a whole is needed. The former sounds like the third hurdle just mentioned by the Secretary, which has become the first, and the latter — I am eager to discuss our constitution with the Secretary. I wonder if the Secretary has copied others' words because he strangely used the term "as a whole" when talking about the operation of the nominating committee as a whole. May I ask the Secretary whether the people close to the Central Authorities, according to the understanding of the SAR Government and the Secretary, are telling us the mind of the Central Authorities? If yes, has it built an unauthorized structure on the Basic Law by placing the Central Authorities' hurdle to the front? I hope the Secretary can give Hong Kong people a clarification whether this is what the Central Authorities think, according to his own understanding.*

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan, according to our Rules of Procedures, you cannot request the Secretary to give a confirmation or further clarification on a press report. In fact, you need not ask your question that way. You can simply ask the Secretary whether the Central Authorities wish to have prior communication and whether a nomination by the nominating committee as a whole is required. Do you mean that?

**MR LEE CHEUK-YAN** (in Cantonese): *Yes. To ask the question direct: Is this what the Central Authorities want? (Laughter)*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, your clarification is very useful. Thank you.

What I can say is that both the Central Government or the SAR Government will act in full compliance with the Basic Law when dealing with the election of the Chief Executive by universal suffrage. I think, at this stage, we should focus on the discussion and study of how to form a nominating committee with wide representativeness under Article 45 of the Basic Law and how to establish the democratic procedures of nomination. We should handle these problems. If Mr LEE Cheuk-yan likes it, he may say that we as a whole study these questions and we as a whole make these decisions. However, we should focus on dealing with these aspects I just mentioned. At this stage, no matter what wordings are used, we have to go back to the Basic Law as this is the most proper and most fundamental approach.

**MR LEE CHEUK-YAN** (in Cantonese): *It is indeed an answer wide of the mark. My question is very simple: Is this what the Central Authorities want?*

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, my reply is very clear and specific. The Central Government and the SAR Government will act in accordance with the Basic Law.

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



**Law Reform Commission's Reports on Children's Welfare**

6. **DR FERNANDO CHEUNG** (in Cantonese): *President, after consultation, the Law Reform Commission (LRC) of Hong Kong published, by phases between 2002 and 2005, four Reports on "Guardianship of Children", "International Parental Child Abduction", "The Family Dispute Resolution Process" and "Child Custody and Access" respectively. In this connection, will the Government inform this Council:*

- (a) *when the Government will proceed with legislative amendments to implement the recommendations made in the aforesaid Reports, and of the complementary measures to facilitate law enforcement;*
- (b) *given that the policy areas covered in the aforesaid Reports are currently under the purview of different departments, how the Government ensures sufficient and good communication among various departments in implementing the relevant policies; and*
- (c) *of the mechanism in place to enhance public awareness of the recommendations made in the aforesaid Reports and how it ensures that children's views are fully considered in the process to formulate the relevant policies?*

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

- (a) The Government attaches importance to children's well-being, including law reform proposals concerning the welfare of children. In conjunction with other bureaux and departments, the Health, Welfare and Food Bureau is closely examining the 87 recommendations made by the LRC in its reports on Guardianship of Children, International Parental Child Abduction and Child Custody and Access. Moreover, the Home Affairs Bureau is examining with other bureaux and departments the 34 recommendations made in the report on the Family Dispute Resolution Process to strengthen family mediation services and enhance the family litigation process. As the recommendations have far-reaching implications and are interrelated in nature, it is necessary to conduct an extensive consultation with relevant

departments and consider ways to follow up the recommendations in a holistic manner. We have yet to reach a position on the recommendations at this stage, or draw up a timetable for amendments to be made to the existing legislation.

As for the recommendations made by the LRC on the Domestic Violence Ordinance (the Ordinance) in its report on Child Custody and Access, the Government has considered the recommendations in reviewing the Ordinance and has proposed legislative amendments to the Ordinance to better protect victims of domestic violence. We are now drafting the amendment bill and plan to introduce the bill into the Legislative Council within the current legislative session.

- (b) For government policies that straddle more than one bureau, we have established arrangements and mechanisms to facilitate the co-ordination within the Government. These arrangements are working well and provide the flexibility for prompt responses by the Government to meet up the changing needs and concerns of the community. Policy Bureaux/departments will continue to work together to follow up the recommendations made by the LRC. Upon completion of our study on the recommendations in the LRC reports and after we have come up with our preliminary views, we will consider conducting further public consultation on our views and proposals. Once we have drawn up the work plan, we will set up an inter-departmental working group to follow up the implementation.
- (c) As to the work carried out by the LRC to promote public awareness of its reform proposals, the LRC's Guardianship and Custody Subcommittee conducted a three-month consultation exercise on its proposals on guardianship and custody in December 1998 prior to the publication of the four reports. After that, the LRC published the reports through a press conference or a press release. Hard copies of the reports were distributed to all Executive Council and Legislative Council Members, all District Council Secretariats and District Offices, public libraries, university libraries and other relevant organizations. In addition, the English and Chinese versions of the four reports were uploaded onto the LRC website.

Upon completion of our study on the recommendations in the LRC reports, we will consider conducting further public consultation on our views and proposals.

In the policy formulation process, government bureaux and departments will take into consideration the impact of the relevant policy or legislation on different quarters and the views of related sectors and age groups. This arrangement is also applicable to child-related policy initiatives. On the welfare policy front, we seek to provide "child-centered, family-focused and community-based" family welfare services. We have also put in place a comprehensive welfare policy to cater for the needs of children in different stages of their development.

**DR FERNANDO CHEUNG** (in Cantonese): *President, my main question has raised three points. Firstly, the four Reports were actually completed within the past two to five years, but as stated in the main reply, the Government has yet to form a position so far. Neither has it drawn up a timetable for proposing legislative amendments to the existing legislation. Secondly, in respect of inter-departmental operation, the Government again advised that there were established mechanisms which have been working well. Finally, in response to how children's views can be considered, the Government said that their views would be considered according to the established practice. Then, in the last paragraph of the main reply, the Secretary went even further to state that a comprehensive welfare policy for children had been put in place.*

*President, I have never heard of this. So, I immediately sought advice from some very experienced organizations and colleagues who have engaged in children affairs for many years. Yet, neither did they hear about it. None of us has ever heard of any comprehensive welfare policy for children in Hong Kong. President, my supplementary question is: Where is it? Can we have a look at the relevant papers?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, as I have pointed out in the main reply, although the current policies for children vary among departments, there is an overall policy on the whole. In other words, such policies can also be found in other areas, say,

medical care, health, education and even home affairs. We will therefore conduct a review at the present stage in the light of the recommendations made by the LRC.

The remark made by the Member that nothing has been done by us is not true at all. It is because, as I have already stated with particular reference to the Ordinance, we are concerned about the impact of domestic violence on children in particular, so we plan to incorporate child protection into the amendment bill in the subsequent period of time with a view to introducing some new initiatives. Coupled with the various welfare initiatives, our 61 integrated family service centres in various districts have strengthened their family care services.

We will, on the one hand, cater for the welfare needs of children, and gradually strengthen the legal protection of children on the other. Therefore, I think that we have worked on the necessary aspects in the first place.

Some of the points raised by the LRC — for example, both parents are duty-bound to take care of their children together — have actually attracted divergent views in the community and a detailed review is therefore required. More time is needed to look into the matter as it is also related to the first two Reports.

**DR FERNANDO CHEUNG** (in Cantonese): *President, I did not say that nothing had been done by the Secretary. Instead, the Government has been working all along. The supplementary question raised by me earlier was actually very clear. To put it simply, while we have never heard of a comprehensive welfare policy for children, it is what our sector has longed for. Since the Government said that we had such a policy, so may I ask: Where is it? How about the relevant papers?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, just now I said that various bureaux and departments have formulated policies for children.

**DR FERNANDO CHEUNG** (in Cantonese): *President, is it possible to have a comprehensive welfare policy for children in the absence of any paper or policy paper? This is really unacceptable.*

**PRESIDENT** (in Cantonese): This is your personal view. Perhaps you need to follow up this matter through other channels.

**MR ABRAHAM SHEK:** *Madam President, regarding the answers as given by the Administration to the question raised by Dr Fernando CHEUNG, in particular the answer to (c) on engaging children's opinions and their views, would the Administration consider setting up a children's commission? If not, why not? Are the children not the people by whom our future will be ruled, and will they not be the rulers?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD:** Madam President, if you remember, the Chief Executive has addressed the public in his policy address last October regarding or considering the setting up of a family commission. And indeed, my Bureau is actually doing the preparatory work on this particular aspect. In this aspect, we will be addressing whether there would be possibility of setting up such a commission which would encompass the interests of various sectors, including children. At the moment, we have not considered setting up a separate children's commission as such.....only after we address the whole concept of a family commission.

**MR ALBERT HO** (in Cantonese): *President, the several Reports published by the LRC were completed nearly a decade ago — they were completed in 1998 and a consultation exercise was conducted a few years later. Thereafter, however, many things disappeared without a trace.*

*Although legislative amendments have been proposed to revise the laws relating to domestic violence, they are indeed too simple. And, despite that those Reports involve a large number of recommendations — there are nearly 100 of them, the Government is still "discussing without making decisions", which is, in fact, totally fruitless.*

*President, we are very worried that they may still not yield any result after a decade. Even today, the Government still fails to advise us what our way forward is and when a result can be obtained. I would rather have the Government telling us at the earliest possible opportunity that it will give up, but not to tell us that the result obtained fails to keep up with the times when the whole world has changed and new ideas may have emerged.*

*Therefore, President, the only result of these kinds of research reports is always to enable discussion by Members, while actual implementation can never be achieved. May I ask the Secretary a simple question: When will there be an answer? Can he advise the whole community the areas where actions will not be taken if he has decided not to do so? When will he inform us of the actions to be taken if he has decided otherwise? Discussion should not continue forever and ever.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, Mr Albert HO has said very clearly that many recommendations have been made in those four Reports, reaching more than 100. We cannot say that none of those 100-odd recommendations will be implemented, or all of them will be implemented as we will have to consider every single opinion and the relations among them.

Just now, I said that the latest published report was released only two years ago in March 2005, and it was related to the first two Reports. While seeking legal advice, we also need to gain a better understanding of the overall response of society and the voices of the general public. Therefore, we will not hastily say whether or not actions will be taken in the course of the consideration. Recommendations that have far-reaching implications on society and about which a consensus has been reached will be expeditiously implemented. For instance, views in relation to the Ordinance have been swiftly incorporated and the new amendments to the Ordinance are expected to be introduced into the Legislative Council by July.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, the answer given by the Secretary earlier in response to Dr Fernando CHEUNG's question concerning a comprehensive welfare policy for children implies that the relevant policies are scattered among different bureaux or departments. It seems that his answer is at odds with the reality and is totally unrelated and incorrect. It is because when we talk about the comprehensive welfare policy for children, our focus should be a holistic — an overall policy.*

*May I ask the Secretary whether or not he will consolidate the policy which is now scattered all over the place into one integrated comprehensive policy for children — just as what he said in the main reply — and include particularly the*

*very important question raised by Dr Fernando CHEUNG on how the viewpoints and opinions of children can be taken into consideration? Because just now the Secretary only said that a Family Commission would be set up, but he did not make particular mention of discussion on children affairs. Will the Secretary formulate a comprehensive welfare policy for children?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, in response to the question raised by Mr Abraham SHEK earlier, I said that the Government was exploring the feasibility of a Family Commission, during which the well-being of all family members (including children) and the actions to be taken will be carefully considered. In that case, all policies relating to children under the purview of various bureaux will be set out and discussed together with new policy proposals. With regard to the future structure and the overall concept, they are subject to the decision of the next term of Government. And yet, public consultation will be conducted before deciding the way forward.

Members should understand that the proposal of setting up a child-related department should not be made when children affairs are merely incidentally touched on, or a department relating to a particular sector is proposed to be set up when it is mentioned. At present, the Government is a matrix structure under which all issues can be addressed across departments and bureaux. It can be seen that, in the past, many LRC reports had gone through the same process before proceeding to the stage of legislation, and no single department or bureau can solve all the problems.

**MR LEUNG YIU-CHUNG** (in Cantonese): *The question I put to the Secretary is indeed very simple. Even though I am aware that the policies concerned are scattered among different departments, the point is, however, only by consolidating these policies can we put in place the comprehensive welfare policy for children as described by the Secretary (while the whole picture is not to be seen by the general public), and enable the public to have a clear picture of the comprehensive policy. I asked whether or not the Secretary will consolidate the policies concerned. I did not say that nothing has been done by the Government, but merely asked if the welfare policy for children can be consolidated to make it complete.*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, in examining the feasibility of a Family Commission, the way forward in this respect will also be considered.

**PRESIDENT** (in Cantonese): We have spent more than 15 minutes on this question. Last supplementary question.

**DR KWOK KA-KI** (in Cantonese): *President, the response given by the Secretary to Mr Abraham SHEK's supplementary question is totally irrelevant because he has merely talked about a Family Commission.*

*President, in fact, Children Commissions have been set up in the United Kingdom, Australia and Canada during the past decade to reform the welfare policy for children. The Secretary advised that 87 and 34 recommendations were made in the Child Custody and Access and The Family Dispute Resolution Process respectively, and that altogether 100-odd recommendations were made in the four LRC Reports. President, may I ask the Secretary whether or not he considers that the creation of a Commissioner for Children or a Children Commission can help the Government (including the Secretary) to implement these 100 to 200 recommendations as early as possible? If not, what are the reasons?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I have had a chance of visiting similar commissions or select committees of different countries to look at their operations. As far as I understand it, the enactment of law may not necessarily achieve the direct effects. I think that the most important thing about law enactment is that the community should share some common values and perceptions, and these mainstream philosophies should then be incorporated into the legal principles by all means. This is indeed the most important procedure.

As a result, voices of the community should not be ignored when a point is raised by the LRC from the legal perspective. We must spend more time on studies in order to get things done. I opine that merely setting up commissions or select committees is not enough, it is also necessary to specify and perform the required duties, and state how they work in conjunction with various bureaux and departments.



**DR KWOK KA-KI** (in Cantonese): *President, sorry, the supplementary question raised by me just now asked if the Secretary can help to speed up the relevant work. May I ask whether or not the Secretary intends to tell me that the establishment of a Children Commission or a Commissioner for Children will slow down rather than speed up the process?*

**PRESIDENT** (in Cantonese): Dr KWOK, it appears not to be what you have just.....

**DR KWOK KA-KI** (in Cantonese): *No, my supplementary question asks if the work cannot be expedited. This is what my original supplementary question is about.*

**PRESIDENT** (in Cantonese): Secretary, you may answer them together if you can.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): President, I believe Dr KWOK really enjoys putting words in other people's mouths. I have said very clearly that I am not in a position to draw any conclusion.

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

## **WRITTEN ANSWERS TO QUESTIONS**

### **Immunization Service**

7. **DR YEUNG SUM** (in Chinese): *President, regarding the immunization service provided by the Department of Health (DH), will the Government inform this Council:*

- (a) *of the morbidity rate of streptococcus pneumoniae disease and meningitis in Hong Kong; the countries which have included the vaccines against these two diseases in their national immunization programmes; the respective estimated cost and cost-effectiveness of*

*including each of these two vaccines in the Childhood Immunization Programme (CIP);*

- (b) *whether it will consider including the above two vaccines in the CIP; if it will, of the details; if not, the reasons for that; and*
- (c) *when vaccine against hepatitis B was first included in the CIP; the estimated number of people in Hong Kong who have not been inoculated with such vaccine; whether it will consider inoculating these people with such vaccine; if it will, of the details; if not, the estimated number of new cases of hepatitis B in Hong Kong in the coming five years and the medical expenses to be incurred?*

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

- (a) The incidence rate of invasive pneumococcal diseases in Hong Kong was reported to be 2.3 per 100 000 population, as compared with 24 per 100 000 population in the United States before the introduction of pneumococcal vaccine there.

Locally, the annual incidence of invasive meningococcal infections was between 0.03 and 0.21 per 100 000 population in 1990 to 2006, as compared with 0.8 to 1.3 per 100 000 population in the United States before the introduction of meningococcal vaccine there.

Some of the countries that have included or not included pneumococcal and meningococcal vaccines in their CIPs are shown in the following table.

<i>Vaccines</i>	<i>Countries which have included the vaccine stated on the left column into their CIPs</i>	<i>Countries which have not included vaccine stated on the left column into their CIPs</i>
Pneumococcal vaccine	the United States, Canada, the United Kingdom, Germany, Australia	Finland, Denmark, Japan and Republic of Korea
Meningococcal vaccine	the United States, the United Kingdom, Australia, Germany	Japan, Republic of Korea, France, Norway, Finland

The cost of including the vaccines into the CIP depends on various factors, such as the type of vaccine used, the mode of vaccination and the supply and demand of the vaccines. It is difficult to estimate the related cost at present.

- (b) The DH receives advice from the Scientific Committee on Vaccine Preventable Diseases (the Committee) under the DH's Centre for Health Protection in updating the CIP of Hong Kong. The Committee regularly reviews the local epidemiology of diseases, scientific development and application of new vaccines as well as their formulations and cost-effectiveness, and the experiences of other health authorities in making recommendations to the DH.

The incidence of invasive meningococcal infections is relatively low in Hong Kong. About half of the meningococcal infections were caused by *Neisseria meningitidis* serogroup B, which is not protected against by the available quadrivalent meningococcal vaccine (which protects against serogroups A, C, Y and W-135). Furthermore, the duration of protection of the vaccine is short, and it is relatively ineffective in children aged under two. Therefore, the Committee concludes that there are insufficient justifications to include the quadrivalent meningococcal vaccine in the CIP of Hong Kong. Taking the Committee's recommendation, the Administration has no plans to introduce meningococcal vaccine into the local CIP.

Inclusion of vaccines against invasive pneumococcal diseases in the CIP for new born babies and the cost-effectiveness of such a programme are being reviewed by the Committee.

- (c) Hepatitis B is a type of viral hepatitis that leads to acute hepatitis. Infected people may also develop a carrier state, which is associated with chronic hepatitis, liver cirrhosis and hepatocellular carcinoma. The risk of carriage varies with the age of infection. It occurs in 90% to 95% of infants infected by perinatal transmission (mother-to-child transmission at or around the time of delivery), 30% of children aged one to five, and 5% to 10% of the youth and adults.

The hepatitis B virus is found in the body fluids of an infected patient or a carrier. It is mainly spread through perinatal, blood or

sexual contact. Perinatally acquired hepatitis B infection was regarded as the most important cause of the high carrier rate in Hong Kong.

In Hong Kong, hepatitis B vaccine has been incorporated into the CIP for newborn babies since 1988 to cover all children born since January 1986. Babies get the immunization at birth in hospitals, followed by immunizations at Maternal and Child Health Centres at one and six months of age. Besides, inoculators of the DH also pay annual visits to all primary schools and check the immunization status of school children. Those who have not been immunized with the hepatitis B vaccine previously will be immunized. The vaccination coverage rates have been maintained at more than 98% at both Primary One and Six in the past 10 years. Therefore, the majority of the people aged 21 or below are immunized against hepatitis B infection.

Acute hepatitis B infection is one of the statutorily notifiable diseases in Hong Kong. The annual number of acute hepatitis B notified in the past five years was about 98 to 130. The breakdown is shown in the following table.

<i>Year</i>	<i>Number of acute hepatitis B infection notified to the DH</i>
2002	121
2003	98
2004	131
2005	104
2006	121

We expect that the number of new cases in the next few years would be within this range.

As the clinical presentations of hepatitis B infection may range from asymptomatic, acute hepatitis, chronic hepatitis, cirrhosis and liver cancer, it is difficult to estimate the medical expenses.

### **Red Fire Ants**

8. **MR JAMES TIEN** (in Chinese): *President, it has been reported that the Sai Kung District Lands Office (DLO/SK) admitted that while it had been notified*

*by the Food and Environmental Hygiene Department (FEHD) in mid-February this year of the suspected presence of red fire ants on the Government land in Area 65 of Tseung Kwan O, it was not until 18 April this year that the authorities formally sent staff to eradicate the red fire ants. As a result, the situation had deteriorated, in that the number of red fire ant mounds has increased from several dozens to several thousands. Regarding the work on eradicating red fire ants, will the Government inform this Council:*

- (a) of the reasons for the delay in eradicating red fire ants at the above location;*
- (b) whether it has reviewed the communication and co-operation between government departments in eradicating ants; if so, of the outcome of the review; if not, the reasons for that; and;*
- (c) how the Government ensures the eradication of all red fire ants in Tseung Kwan O District, and monitors whether red fire ants are present in various districts in the New Territories?*

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

- (a) To tackle the problem of suspected red fire ants on the Government land in Area 65 of Tseung Kwan O, the DLO/SK instructed its contractor to conduct eradication and devegetation work. Given the extensive area of the site involved, the work could not be completed within a short space of time. Additional manpower was subsequently deployed by the DLO/SK to complete the eradication work on the site and in the neighbouring areas, involving a total area of 31 hectares. The DLO/SK has now stepped up inspections on red fire ants, conducting regular inspections on vacant Government land in the Tseung Kwan O and Hang Hau areas.
- (b) The Health, Welfare and Food Bureau set up an inter-departmental action group to effectively co-ordinate the control and prevention of red fire ants after they were first detected in 2005. The action group comprises members from various government departments and relevant agencies, including the Agriculture, Fisheries and Conservation Department (AFCD); FEHD; Department of Health; Housing Department; Leisure and Cultural Services Department;

Highways Department; Civil Engineering and Development Department; Lands Department; Home Affairs Department; Architectural Services Department; Education and Manpower Bureau; Environmental Protection Department; Environment, Transport and Works Bureau; Information Services Department; and Airport Authority. The action group has sought full co-operation from the government departments, which are tasked to inspect the venues and premises under their respective purview and take prompt action to eradicate red fire ant mounds, with reference to the technical note on red imported fire ant control methods issued by the AFCD.

In respect of the red fire ant incident at issue, the government departments concerned have reviewed the experience gained and adopted measures to strengthen communication and efficacy of their work, and conducted checks at the venues and premises under their purview as well as follow-up inspections at sites where red fire ant mounds had previously been found. The departments concerned will also submit a working report on the control and prevention of red fire ants to the AFCD every three months.

As regards technical support, the AFCD will discuss with the departments concerned the tactics on control and prevention against red fire ants having regard to the scale of red ant infestation. The AFCD will also organize technical seminars on the control and prevention of red fire ants for government departments, their contractors and pesticide application service providers to advise them on the latest methods for pesticide application and mound treatment, so as to help departments eradicate the infestation expeditiously.

- (c) The relevant departments and contractors for District Lands Offices have held working meetings on the case at issue, to explore ways to enhance the efficacy of ant eradication work and to draw up future plans for control and eradication of ants. These include regular inspections and devegetation on vacant Government land in areas including Tseung Kwan O and Hang Hau, after the completion of ant eradication work. Suspected ant mounds would be treated immediately upon discovery. Where necessary, the District Lands Offices may seek the professional advice of the AFCD.

Red fire ants would be found occasionally in Hong Kong. To control red fire ant problem in Tseung Kwan O as well as other districts, the AFCD has held seminars for the government departments concerned, their contractors and owners' corporations on the proper ways to eradicate red fire ants. It has also distributed leaflets and posters on ways to handle red fire ant problems in these districts, offering advice on the control and prevention techniques where necessary. Moreover, the Government will also continue to step up public education through the websites of the AFCD, Department of Health and FEHD, Announcements in the Public Interests and posters and publicity leaflets, so as to keep the public alert and solicit their help in monitoring the presence of these ants. As mentioned in part (b) above, the departments concerned will also conduct follow-up inspections at sites where ant mounds had been found previously, in addition to inspecting and carrying out control and prevention measures against red fire ants in the venues and premises under their purview. Red fire ant mounds will be eradicated as soon as possible upon discovery.

### **Government Officials Attending Meetings of Statutory and Advisory Bodies**

9. **MR MARTIN LEE** (in Chinese): *President, regarding the attendance at the meetings of various statutory bodies, advisory bodies and the committees under these bodies by Directors and Permanent Secretaries of Bureaux in their capacity as members, will the Government inform this Council:*

- (a) *of the details of the cases in which the attendance rates at the meetings concerned of such bodies/committees in the past two years by the aforesaid officials in their capacity as members were lower than 50%, including the names of the statutory bodies/advisory bodies/committees concerned, the post titles of the officials and their respective attendance rates;*
- (b) *whether it had reviewed in the past two years the relevant attendance rates of the aforesaid officials; if so, of the department which conducted the review, and the outcome of the review; if not, the reasons for that, and whether it will conduct such a review; and*
- (c) *whether there are measures in place to improve the relevant attendance rates; if so, of the details of such measures?*

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

(a) At present, there are 70 advisory and statutory bodies (ASBs) the membership of which comprises Directors of Bureaux or Permanent Secretaries. In general, these ASBs give Directors of Bureaux or Permanent Secretaries the flexibility to assign representatives to attend meetings on their behalf if and when necessary. Details of the cases in which the attendance rates of those officials or their representatives falling below 50% at the meetings of such ASBs/committees in 2005 and 2006 are set out at Annex.

(b) and (c)

Of the cases included in Annex, the Directors of Bureaux concerned have reviewed the arrangement of attending the meetings, including the need to maintain their standing membership status in the ASBs/committees concerned. In general, the relevant Directors of Bureaux/Permanent Secretaries will, having regard to the agenda of the meeting, decide whether his/her attendance to the meetings is necessary. For meetings with relevant items, they will attend the meetings themselves as far as possible; and, depending on the actual circumstances of the case, assign suitable representatives to attend the meetings if they are unable to attend because of other official commitments. In such cases, the representatives will brief the Directors of Bureaux/Permanent Secretaries concerned on matters discussed and issues to be followed up after the meetings.

Annex

Directors of Bureaux/Permanent Secretaries or their representatives  
serving as members of ASBs  
and their committees whose attendance rates are below 50%

<i>Name of ASB/ Committee</i>	<i>Post title of official serving as member of the ASB/committee concerned</i>	<i>Attendance rate (1 January 2005 to 31 December 2006)</i>		
		<i>Number of meetings held</i>	<i>Number of meetings attended</i>	<i>Attendance Rate</i>
Council for Sustainable Development	Secretary for Health, Welfare and Food <sup>1</sup>	6	0	0%



<i>Name of ASB/ Committee</i>	<i>Post title of official serving as member of the ASB/committee concerned</i>	<i>Attendance rate (1 January 2005 to 31 December 2006)</i>		
		<i>Number of meetings held</i>	<i>Number of meetings attended</i>	<i>Attendance Rate</i>
Statistics Advisory Board	Secretary for Health, Welfare and Food or his representative <sup>2</sup>	4	0	0%
Elderly Commission	Secretary for Education and Manpower or his representative <sup>3</sup>	8	0	0%
Council for the AIDS Trust Fund	Secretary for Financial Services and the Treasury or his representative <sup>4</sup>	5	0	0%

<sup>1</sup> As the agenda items were not directly related to the Health, Welfare and Food Bureau, the Bureau's representative did not attend the meetings. If the agenda items concern the Bureau directly, the Bureau would be represented at the meetings to participate in the discussion.

<sup>2</sup> As the agenda items were not directly related to the Health, Welfare and Food Bureau, the Bureau's representative did not attend the meetings. The Bureau has earlier indicated that there is no practical need for them to continue to be a standing member of the Board. Arrangement for change to membership is being made. Before the change is completed, the Bureau will continue to give advice and support to the Board as necessary.

<sup>3</sup> As the agenda items were not related to the Education and Manpower Bureau, the Secretary for Education and Manpower or his representative did not attend the meetings. The Education and Manpower Bureau has been maintaining close contact with the Health, Welfare and Food Bureau and the Elderly Commission on the relevant issues. If the agenda items concern the Education and Manpower Bureau, the Bureau would assign representative to attend the meeting to participate in the discussion.

<sup>4</sup> Given that the general business of the Council has no direct relevance to the policies under the purview of Financial Services and the Treasury Bureau, the Bureau's representative has not attended the meetings. The Bureau has earlier indicated that there is no practical need to continue to be a member of this Council. The change in the composition of the Council is underway. Before the change is completed, the Bureau will continue to offer advice and support to the Council through different channels as necessary.

## **Government Lawsuits Against Tobacco Companies**

10. **MR ANDREW CHENG** (in Chinese): *President, as there are cases of overseas governments filing lawsuits against tobacco companies there, will the Government inform this Council whether:*

- (a) *it has collated details of the lawsuits filed in recent years by overseas governments and community organizations against tobacco companies there in relation to diseases caused by smoking; if so, of the details of each case in the past five years in which judgement was made in favour of the plaintiff(s), including the country where the lawsuit was filed, the plaintiff(s), the grounds for bringing the lawsuit and the court ruling;*
- (b) *it is aware of the lawsuits filed in the past two years by the British Columbia Government in Canada against a number of tobacco companies there to recover the health care expenditure on diseases caused by smoking; if so, of the details; and*
- (c) *it has assessed the amount of public health care expenditure spent in Hong Kong annually on diseases caused by smoking, and whether it will study the prospect of success in recovering the relevant expenditure through lawsuits against tobacco companies?*

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

- (a) The Government comes to know about the lawsuits filed by overseas governments against tobacco companies from public domain sources. Many of these lawsuits were instituted in recent years, now still pending the final outcomes. For details of these cases, please refer to the sources listed in the Annex.
- (b) The Government knows from public domain sources that the British Columbia Government in Canada has filed lawsuits against tobacco companies for production, promotion and sale of tobacco products pursuant to The Tobacco Damages and Health Care Costs Recovery Act since 2001. It is understood that the final outcomes of these lawsuits are still pending.
- (c) The Government has not made any assessment on the public health care cost in Hong Kong on smoking-induced diseases. However, we believe that the significant extension of statutory smoking ban with effect from 1 January this year will help reduce passive smoking and smoking-related health hazards. According to the

research findings published by the Department of Community Medicine, School of Public Health, University of Hong Kong in February 2005, it was estimated that the prevailing annual health care cost from tobacco use in Hong Kong amounted to \$2.6 billion.

It has been the Government's tobacco control policy to seek, through a step-by-step approach, to contain tobacco use and minimize its impact on public health by adopting a wide array of measures comprising publicity, health education, taxation, legislation and law enforcement. To that end, sustained efforts will be made as necessary to enhance the tobacco control measures in the light of public demands. At this stage, the Government has no plan to control tobacco use through civil proceedings against tobacco sale.

Annex

#### Litigations Against Tobacco Companies in Overseas Countries

<i>Country</i>	<i>Sources for reference</i>
the United States (2006)	( < <a href="http://www.tobaccofreekids.org/reports/doj/">http://www.tobaccofreekids.org/reports/doj/</a> > )
Australia (2005)	( < <a href="http://www.acc.gov.au/content/index.phtml/itemId/713957/fromItemId/620258">http://www.acc.gov.au/content/index.phtml/itemId/713957/fromItemId/620258</a> > )
	( < <a href="http://www.acc.gov.au/content/index.phtml/itemId/683563/fromItemId/620258">http://www.acc.gov.au/content/index.phtml/itemId/683563/fromItemId/620258</a> > )
	( < <a href="http://www.acc.gov.au/content/index.phtml/itemId/683582/fromItemId/620258">http://www.acc.gov.au/content/index.phtml/itemId/683582/fromItemId/620258</a> > )
Canada (2005)	( < <a href="http://www.healthplanning.gov.bc.ca/tobacco/litigation/index.html">http://www.healthplanning.gov.bc.ca/tobacco/litigation/index.html</a> > )
	( < <a href="http://www.qp.gov.bc.ca/statreg/stat/T/00030_01.htm">http://www.qp.gov.bc.ca/statreg/stat/T/00030_01.htm</a> > )
	( < <a href="http://www2.news.gov.bc.ca/news_releases_2005-2009/2005HEALTH0021-000874.htm">http://www2.news.gov.bc.ca/news_releases_2005-2009/2005HEALTH0021-000874.htm</a> > )
	( < <a href="http://www2.news.gov.bc.ca/news_releases_2005-2009/2006HEALTH0058-001124.htm">http://www2.news.gov.bc.ca/news_releases_2005-2009/2006HEALTH0058-001124.htm</a> > )
Norway (2000)	( < <a href="http://www.who.int/tobacco/en/final_jordan_report.pdf">http://www.who.int/tobacco/en/final_jordan_report.pdf</a> > )
the United States (mid-1990s)	( < <a href="http://caag.state.ca.us/tobacco/msa.htm">http://caag.state.ca.us/tobacco/msa.htm</a> > )

### **Sale of Spurious Proprietary Chinese Medicine**

11. **MS LI FUNG-YING** (in Chinese): *President, it has been reported that at present, as estimated by members of the trade, half of the drug stores sell products of proprietary Chinese medicine which are spurious or allude to particular trade marks, and the number of complaints about proprietary Chinese medicine received by the Consumer Council in the first three months of this year is already equivalent to 76% of the figure for the whole of last year. In this connection, will the Government inform this Council:*

- (a) *of the number of inspections and test purchases conducted to tackle the aforesaid problem by the government departments concerned over the past three years;*
- (b) *of the number of prosecutions instituted by the relevant authorities over the past three years, together with a breakdown by the offences involved, and among such prosecutions, the number of convicted cases and the penalties imposed by the Court on the convicted persons; and*
- (c) *whether new measures will be put in place to curb the aforesaid problem to safeguard public health; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese) President, in 2006, the Consumer Council received 38 complaints about proprietary Chinese medicines, of which five were about suspected spurious products. The products concerned were subsequently confirmed not spurious. As at 31 March 2007, the Consumer Council received 29 complaints about proprietary Chinese medicines, of which 11 were about suspected spurious products. All these 11 complaints were lodged through the same complaint letter. The complainants concerned alleged that some medicine companies sold spurious proprietary Chinese medicines, but did not provide details of the spurious products. The Consumer Council has already contacted the complainants, but has yet to obtain the relevant information.

- (a) The Trade Descriptions Ordinance provides that any person who imports, exports, sells or produces goods to which a forged trade mark is applied commits an offence. The maximum penalty is a fine of \$500,000 and imprisonment for five years upon conviction

on indictment, and a fine of \$100,000 and imprisonment for two years on summary conviction. Activities involving allusion to a particular trade mark constitute a civil infringement.

The Customs and Excise Department (C&ED) is responsible for taking criminal enforcement action against activities involving counterfeit goods under the above Ordinance. Similar to its investigation into other general trademark counterfeiting cases, the C&ED mainly acts on complaints and intelligence and takes enforcement action against suspicious activities involving counterfeit proprietary Chinese medicines. Upon receipt of a complaint, the C&ED will carry out an investigation immediately and contact the trademark owner to verify the authenticity of the brand proprietary Chinese medicine in question. As the C&ED's enforcement actions are not taken in the form of regular shop inspection, we are unable to furnish the figure mentioned in the question.

- (b) Over the past three years, the numbers of enforcement actions taken by the C&ED in respect of forged trade marks of proprietary Chinese medicines are as follows:

	2004	2005	2006
Number of prosecutions	7 cases	28 cases	10 cases
Number of convictions	6 cases	27 cases	10 cases
Number of cases still under investigation	-	-	4 cases

Over the past three years, the penalties imposed by the Court on persons convicted of offences related to forged trade marks of proprietary Chinese medicines are as follows:

Imprisonment	Maximum Penalty: 12 months (immediate sentence) Minimum Penalty: four weeks (suspended for 24 months)
Fine	Maximum Penalty: \$25,000 Minimum Penalty: \$750

According to records, the penalties imposed by the Court in most of the cases are usually a fine ranging from \$1,000 to \$5,000.

- (c) On top of the C&ED's actions to fight against spurious proprietary Chinese medicines under the Trade Descriptions Ordinance, the Department of Health (DH) also, for protection of public health, collects samples of proprietary Chinese medicines in the market regularly to check if there are any excessive levels of heavy metals and adulteration with Western drug ingredients. In addition, the DH requests the proprietary Chinese medicine importers to submit samples for testing upon their application for import licences. The DH will also act on referrals from the Hospital Authority or other information from complaints and test the proprietary Chinese medicines with suspected problems. In cases where proprietary Chinese medicines with safety problems are found in the market, the DH will request the wholesalers and retailers to recall the products.

We also strive to regulate proprietary Chinese medicines at source. The Chinese Medicines Board of the Chinese Medicine Council of Hong Kong has completed processing applications for the transitional wholesaler licence in proprietary Chinese medicines. We are planning to submit a Commencement Notice of the relevant provisions of the Chinese Medicine Ordinance to the Legislative Council later this year. When the provisions concerned come into force, parties without a licence will not be allowed to deal with the wholesale of proprietary Chinese medicines. In addition, the DH will accept applications for import licence of proprietary Chinese medicines from licensed wholesalers only. According to the requirements set out in the Practising Guidelines for Wholesalers of Proprietary Chinese Medicines promulgated by the Chinese Medicines Board, wholesale dealers in proprietary Chinese medicines should not deal in proprietary Chinese medicines which are suspected to be spurious. The Chinese Medicines Board may consider taking disciplinary actions against Chinese medicines traders in breach of the requirements, including issuance of warnings to the wholesale dealers, variation of the conditions or restrictions subject to which a licence was issued to them, as well as suspension or revocation of the licence.

### **Government Officials Serving as Members of Governance Structures of Public Bodies**

12 MS AUDREY EU (in Chinese): *President, will the Government inform this Council:*

- (a) *of the purposes of and criteria for appointing government officials to be members of the governance structure of public bodies, and list in the table below the names of the public bodies to which government officials have been appointed as members of their governance structures in the past three years, as well as the titles and names of such government officials:*

<i>Names of public bodies</i>	<i>Post titles and names of government officials</i>

- (b) *of the number of meetings held by the governance structure of each of the above public bodies in the past three years, the attendance of the above government officials at such meetings and their attendance rates, as well as the post titles and names of those government officials whose attendance rates were below 60%, broken down by public bodies; and*
- (c) *whether it has set up any mechanism to prescribe the minimum attendance rate for the government officials concerned at the above meetings; if so, of the details; if not, the reasons for that?*

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

- (a) and (b)

Government officials appointed to be members of the governance structure of public bodies are usually from bureaux or departments relevant to the work of the bodies concerned. Their roles are in general to offer advice from the perspectives of the Government's policy in relevant areas to enable the bodies concerned to give due regard to the policy of the Government and the wide public interests in the pursuit of their organizational goals. Names of public bodies with government officials serving as members of their governance structure and details of attendance of the relevant officials at meetings of these bodies for the past three years are set out at Annex.

- (c) At present, the public bodies listed in Annex have not set any specific requirement with regard to the attendance rate of their

members (including official members). In general, the relevant government officials will, having regard to the agenda of the meeting, decide whether his/her attendance to the meetings is necessary. For meetings with relevant items, they will attend the meetings themselves as far as possible; and, depending on the actual circumstances of the case, assign suitable representatives to attend the meetings if they are unable to attend because of other official commitments. In such cases, the representatives will brief the government officials concerned on matters discussed and issues to be followed up after the meetings. As arrangements regarding attendance of members (including official members) at meetings of public bodies is a matter concerning the operation of the respective bodies, whether specific requirements should be made on the attendance rate of members (including official members) shall be decided by the bodies concerned, having regard to their actual situation.

Annex

**Public organizations with government officials serving as members of their  
governance structure and numbers of meetings attended  
by relevant officials and their attendance rates**

1. Non-departmental Public Bodies

<i>Name of Body</i>	<i>Name of government official<sup>1</sup></i>	<i>Attendance rate (1 January 2004 to 31 December 2004)</i>			<i>Attendance rate (1 January 2005 to 31 December 2005)</i>			<i>Attendance rate (1 January 2006 to 31 December 2006)</i>		
		<i>No. of meet-ings</i>	<i>No. of attend-ances</i>	<i>Rate</i>	<i>No. of meet-ings</i>	<i>No. of attend-ances</i>	<i>Rate</i>	<i>No. of meet-ings</i>	<i>No. of attend-ances</i>	<i>Rate</i>
Hong Kong Deposit Protection Board	Permanent Secretary for Financial Services and the Treasury (Financial Services)	4	4	100%	6	6	100%	5	5	100%

<sup>1</sup> Since the posts mentioned above might be held by different persons during the past three years (or even in the same year), the attendance rate has been calculated according to the post titles of the government officials concerned. Separately, while the membership lists of the relevant bodies may not specify that the membership of the relevant government officials also covers their representatives, the relevant government officials may assign representatives to attend the meetings if they are unable to attend because of other official commitments. The figures above indicate the attendance rates of the relevant government officials and their representatives in the year concerned.



Name of Body	Name of government official <sup>1</sup>	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Hong Kong Trade Development Council	Secretary for Commerce, Industry and Technology	8	8	100%	6	6	100%	4	4	100%
Hong Kong Trade Development Council	Director of Information Services	8	5	63%	6	6	100%	4	4	100%
Board of Directors of the Applied Research Council	Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) or representative	6	6	100%	5	5	100%	5	5	100%
Hong Kong Productivity Council	Permanent Secretary for Commerce, Industry and Technology or representative	3	3	100%	3	2	67%	4	3	75%
Hong Kong Productivity Council	Commissioner for Innovation and Technology or representative	3	3	100%	3	3	100%	4	4	100%
Hong Kong Productivity Council	Director-General of Trade and Industry or representative	3	3	100%	3	2	67%	4	3	75%
Hong Kong Productivity Council	Government Economist	3	0	0%	3	2	67%	4	3	75%
Hong Kong Productivity Council	Deputy Commissioner for Labour or representative	3	3	100%	3	3	100%	4	4	100%
Occupational Safety and Health Council	Commissioner for Labour or representative	4	4	100%	4	4	100%	4	4	100%

Name of Body	Name of government official <sup>1</sup>	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Occupational Safety and Health Council	Principal Assistant Secretary of Works, Environment, Transport and Works Bureau responsible for industrial and construction site safety matters	4	3	75%	4	4	100%	4	4	100%
Occupational Safety and Health Council	Government Chemist or representative	4	3	75%	4	3	75%	4	4	100%
Hong Kong Examinations and Assessment Authority	Permanent Secretary for Education and Manpower or representative	6	5	83%	7	7	100%	4	3	75%
Employees Retraining Board	Commissioner for Labour	5	5	100%	5	5	100%	5	5	100%
Employees Retraining Board	Deputy Secretary for Education and Manpower	5	5	100%	5	5	100%	5	5	100%
Vocational Training Council	Deputy Secretary for Education and Manpower	4	4	100%	4	4	100%	5	5	100%
Vocational Training Council	Director-General of Trade and Industry	4	4	100%	4	3	75%	5	4	80%
Vocational Training Council	Commissioner for Labour	4	4	100%	4	4	100%	5	5	100%
Financial Reporting Council <sup>2</sup>	Registrar of Companies	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

<sup>2</sup> Financial Reporting Council was established on 1 December 2006 pursuant to the Financial Reporting Council Ordinance. The Council had not held any meeting till 31 December 2006.

Name of Body	Name of government official <sup>1</sup>	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Board of Governors of the Prince Philip Dental Hospital	Deputy Secretary for Health, Welfare and Food (Health)	3	3	100%	4	4	100%	3	3	100%
Board of Governors of the Prince Philip Dental Hospital	Deputy Secretary for Education and Manpower	3	2	67%	4	2	50%	3	2	67%
Board of Governors of the Prince Philip Dental Hospital	Deputy Director of Health <sup>3</sup>	2	1	50%	N/A	N/A	N/A	N/A	N/A	N/A
Board of Governors of the Prince Philip Dental Hospital	Consultation in-charge Dental Service, Department of Health <sup>4</sup>	1	1	100%	4	4	100%	3	3	100%
Board of Governors of the Prince Philip Dental Hospital	Assistant Director of Health (Administration and Policy) <sup>5</sup>	N/A	N/A	N/A	2	2	100%	3	2	67%
Hospital Authority	Permanent Secretary for Health, Welfare and Food (Health and Welfare) <sup>6</sup>	N/A	N/A	N/A	N/A	N/A	N/A	11	11	100%
Hospital Authority	Deputy Secretary for Health, Welfare and Food (Health) <sup>7</sup>	17	17	100%	14	14	100%	4	4	100%

<sup>3</sup> Appointment ended on 31 July 2004.

<sup>4</sup> Appointment started on 1 August 2004.

<sup>5</sup> Appointment started on 1 August 2005.

<sup>6</sup> Appointment started in June 2006.

<sup>7</sup> Appointment ended in June 2006.

Name of Body	Name of government official <sup>1</sup>	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Hospital Authority	Director of Health	17	17	100%	14	14	100%	15	15	100%
Hospital Authority	Secretary for Financial Services and the Treasury or representative	17	16	94%	14	14	100%	15	15	100%
Hong Kong Arts Development Council	Secretary for Home Affairs or representative	7	7	100%	9	9	100%	8	8	100%
Hong Kong Arts Development Council	Permanent Secretary for Education and Manpower or representative	7	7	100%	9	5	56%	8	7	88%
Hong Kong Arts Development Council	Director of Leisure and Cultural Services or representative	7	7	100%	9	8	89%	8	8	100%
Council of the Hong Kong Academy for Performing Arts	Secretary for Home Affairs or representative	4	4	100%	3	3	100%	3	3	100%
Council of the Hong Kong Academy for Performing Arts	Secretary for Education and Manpower or representative	4	4	100%	3	2	67%	3	3	100%
Hong Kong Housing Authority	Secretary for Financial Services and the Treasury or alternate member	6	6	100%	5	5	100%	5	5	100%
Hong Kong Housing Authority	Director of Lands or alternate member	6	5	83%	5	3	60%	5	3	60%

Name of Body	Name of government official <sup>1</sup>	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Board of the Urban Renewal Authority	Director of Buildings	13	13	100%	10	9	90%	11	10	91%
Board of the Urban Renewal Authority	Director of Home Affairs	13	11	85%	10	10	100%	11	9	82%
Board of the Urban Renewal Authority	Director of Lands	13	13	100%	10	8	80%	11	9	82%
Board of the Urban Renewal Authority	Director of Planning	13	13	100%	10	10	100%	11	11	100%

## 2. Public Corporation

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Board of Directors of the Hong Kong Science and Technology Parks Corporation	Permanent Secretary for Commerce, Industry and Technology or representative	7	7	100%	8	8	100%	6	6	100%
Airport Authority	Secretary for Economic Development and Labour or representative	7	7	100%	8	8	100%	8	8	100%

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate
Airport Authority	Secretary for Financial Services and the Treasury or representative	7	7	100%	8	8	100%	8	8	100%
Ocean Park Corporation Board	Secretary for Financial Services and the Treasury or representative <sup>8</sup>	N/A	N/A	N/A	N/A	N/A	N/A	6	5	83%
Ocean Park Corporation Board	Commissioner for Tourism or representative	4	4	100%	5	5	100%	7	7	100%
Ocean Park Corporation Board	Deputy Secretary for Home Affairs (3) (till July 2006)/ Permanent Secretary for Home Affairs (since July 2006) <sup>9</sup>	4	4	100%	5	1	20%	7	4	57%
Ocean Park Corporation Board	Permanent Secretary for the Environment, Transport and Works (Works) or representative <sup>10</sup>	N/A	N/A	N/A	N/A	N/A	N/A	6	6	100%

<sup>8</sup> Appointed in March 2006.

<sup>9</sup> The housekeeping responsibility of Ocean Park has been transferred to the Tourism Commission, Economic Development and Labour Bureau since 1 April 2005. Although representative of the Home Affairs Bureau is still a member of the Ocean Park Corporation Board and the Development Sub-committee of the Ocean Park Corporation Board, the Bureau's main interest is on matters relating to recreation. The Home Affairs Bureau had studied the agendas of the relevant meetings and attended those meetings that required the input of the Bureau.

<sup>10</sup> Appointed in March 2006.

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate
Managing Board of the Kowloon-Canton Railway Corporation	Secretary for the Environment, Transport and Works or representative	17	17	100%	12	12	100%	16	16	100%
Managing Board of the Kowloon-Canton Railway Corporation	Secretary for Financial Services and the Treasury or representative	17	17	100%	12	12	100%	16	16	100%

### 3. Regulatory Bodies

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate
Engineers Registration Board	Assistant Secretary for the Environment, Transport and Works	4	4	100%	4	3	75%	4	3	75%
Planners Registration Board	Assistant Secretary for the Environment, Transport and Works	4	4	100%	3	3	100%	4	4	100%
Surveyors Registration Board	Principal Assistant Secretary for the Environment, Transport and Works (Works)4	5	5	100%	5	4	80%	5	5	100%

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Architects Registration Board	Principal Assistant Secretary for the Environment, Transport and Works (Works)4	8	7	88%	8	7	88%	8	8	100%
Landscape Architects Registration Board	Assistant Secretary for the Environment, Transport and Works	2	2	100%	2	2	100%	2	1	50%
Construction Workers Registration Authority	Chief Assistant Secretary, Environment, Transport and Works Bureau	2	2	100%	9	9	100%	5	5	100%
Construction Workers Registration Authority	Assistant Commissioner for Labour	2	1	50%	9	6	67%	5	4	80%
Construction Workers Registration Authority	Assistant Director of Housing	2	1	50%	9	6	67%	5	3	60%
Construction Workers Registration Authority	Transport, Security and Central Services Manager, Electrical and Mechanical Services Department	2	2	100%	9	9	100%	5	3	60%
Council of the Hong Kong Institute of Certified Public Accountants	Registrar of Companies (authorized as Representative of Financial Secretary)	16	15	94%	12	12	100%	13	13	100%



Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Council of the Hong Kong Institute of Certified Public Accountants	Director of Accounting Services	16	11	69%	12	9	75%	13	13	100%
Mandatory Provident Fund Schemes Authority	Secretary for Financial Services and the Treasury or representative	4	3	75%	4	4	100%	5	5	100%
Mandatory Provident Fund Schemes Authority	Secretary for Economic Development and Labour or representative	4	4	100%	4	4	100%	5	4	80%
Social Workers Registration Board	Assistant Director of Social Welfare	9	8	89%	8	6	75%	8	8	100%
Estate Agents Authority	Assistant Director of Housing (Private Housing) <sup>11</sup>	3	3	100%	N/A	N/A	N/A	N/A	N/A	N/A
Estate Agents Authority	Permanent Secretary for Housing, Planning and Lands (Housing) or representative <sup>12</sup>	1	1	100%	4	4	100%	6	6	100%
Housing Managers Registration Board	Permanent Secretary for Housing, Planning and Lands (Housing) or representative <sup>13</sup>	N/A	N/A	N/A	N/A	N/A	N/A	3	2	67%

<sup>11</sup> Appointment ended on 31 October 2004.

<sup>12</sup> Appointment started on 1 November 2004.

<sup>13</sup> As the appointment of Permanent Secretary for Housing, Planning and Lands (Housing) started on 1 April 2006, the meetings held before the date were not counted.

## 4. Advisory and Management Boards of Trusts/Funds and Funding Schemes

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Employees Compensation Assistance Fund Board	Commissioner for Labour or representative	3	3	100%	3	3	100%	2	2	100%
Employees Compensation Assistance Fund Board	Director of Legal Aid or representative	3	3	100%	3	3	100%	2	2	100%
Employees' Compensation Insurance Levies Management Board	Senior Labour Officer of Labour Department responsible for matters relating to employees' compensation	2	2	100%	2	2	100%	1	1	100%
Occupational Deafness Compensation Board	Consultant (Community Medicine) with responsibility for matters relating to occupational health, Department of Health	4	4	100%	3	3	100%	4	4	100%
Occupational Deafness Compensation Board	Senior Labour Officer of Labour Department responsible for matters relating to employees' compensation	4	4	100%	3	3	100%	4	4	100%
Pneumoconiosis Compensation Fund Board	Senior Labour Officer of Labour Department responsible for pneumoconiosis compensation	4	4	100%	4	4	100%	4	4	100%

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate
Pneumoconiosis Compensation Fund Board	Assistant Director of Accounting Services (Provident Funds)	4	4	100%	4	3	75%	4	3	75%
Board of Management of the Chinese Permanent Cemeteries	Director of Lands	2	1	50%	2	1	50%	2	2	100%
Board of Management of the Chinese Permanent Cemeteries	Director of Food and Environmental Hygiene	2	2	100%	2	2	100%	2	2	100%
Board of Trustees of the Sir Edward Youde Memorial Fund	Secretary for Home Affairs or representative	3	3	100%	3	3	100%	2	2	100%
Brewin Trust Fund Committee	Director of Social Welfare/ Assistant Director of Social Welfare (Family and Child Welfare)	1	1	100%	1	1	100%	1	1	100%
Brewin Trust Fund Committee	Commissioner for Labour/ Assistant Commissioner for Labour (Employees' Rights and Benefits)	1	1	100%	1	1	100%	1	1	100%
Grantham Scholarships Fund Committee	Permanent Secretary for Education and Manpower	1	1	100%	1	1	100%	1	1	100%

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate
Li Po Chun Charitable Trust Fund Committee	Controller, Student Financial Assistance Agency	1	1	100%	1	1	100%	1	1	100%
Li Po Chun Charitable Trust Fund Committee	Director of Social Welfare/ Assistant Director of Social Welfare (Family and Child Welfare)	1	1	100%	1	1	100%	1	1	100%
Sir Robert Black Trust Fund Committee	Director of Social Welfare	1	1	100%	1	1	100%	1	1	100%

## 5. Other Bodies

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate	No. of meet- ings	No. of attend- ances	Rate
Federation of Hong Kong Industries General Committee	Deputy Director-General of Trade and Industry (DG of TI) or Assistant DG of TI	10	8	80%	12	9	75%	12	11	92%
Board of Director of the Hong Kong Applied Science and Technology Research Company Limited (ASTRI) <sup>14</sup>	Permanent Secretary for Commerce, Industry and Technology (Communications and Technology)	6	6	100%	4	4	100%	4	4	100%

<sup>14</sup> ASTRI is a government wholly-owned company and not included in the list of public sector advisory and statutory bodies.

Name of Body	Name of government official	Attendance rate (1 January 2004 to 31 December 2004)			Attendance rate (1 January 2005 to 31 December 2005)			Attendance rate (1 January 2006 to 31 December 2006)		
		No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate	No. of meet-ings	No. of attend-ances	Rate
Board of Director of the Hong Kong Applied Science and Technology Research Company Limited (ASTRI) <sup>14</sup>	Commissioner for Innovation and Technology	6	6	100%	4	4	100%	4	4	100%
Council of the Open University of Hong Kong	Deputy Secretary for Education and Manpower (1)	3	3	100%	3	2	67%	3	3	100%
Council of the Hong Kong Institute of Education	Secretary for Education and Manpower or representative (Deputy Secretary for Education and Manpower (3)) <sup>15</sup>	4	2	50%	5	4	80%	5	5	100%
Construction Industry Training Authority	Secretary for the Environment, Transport and Works or representative	7	7	100%	8	8	100%	4	4	100%
Construction Industry Training Authority	Commissioner for Labour or representative	7	5	71%	8	7	88%	4	3	75%
Clothing Industry Training Authority	Commissioner for Labour or representative	4	3	75%	4	4	100%	2	1	50%
Clothing Industry Training Authority	Director-General of Trade and Industry or representative	4	4	100%	4	2	50%	2	2	100%

<sup>15</sup> Deputy Secretary for Education and Manpower (3) had to attend other meeting and therefore could not attend two meetings held in 2004.

**Promotion of Breastfeeding**

13. **MR LEE WING-TAT** (in Chinese): *President, regarding the promotion of breastfeeding, will the Government inform this Council whether:*

- (a) *it has studied the difficulties and limitations in providing breastfeeding facilities in major shopping centres, restaurants, civic centres and places of amusement; if it has, of the findings of the study;*
- (b) *it has, according to the "Ten Steps to Successful Breastfeeding" (the Ten Steps) issued by the World Health Organization (WHO), requested private hospitals to decline the offer of donation or sponsorship of free or low-priced breast milk substitutes; if so, of the details; if not, the reasons for that; and*
- (c) *it has any plan to step up publicity on the benefits of breast milk to newborn babies; if so, of the details of the specific measures?*

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

- (a) At present, baby-sitting and breastfeeding facilities are made available, according to needs, in some large shopping malls, department stores, hotels and government premises and facilities. We will discuss with other government departments and the private sector for further promotion of breastfeeding and explore the need and feasibility of setting up more breastfeeding places. To accommodate baby-sitting rooms and breastfeeding facilities in a building, a number of requirements must be met under the Buildings Ordinance with regard to the building's alterations, structure and maintenance. To effect any alternations, consideration must be given to, among others, whether the locations of the relevant facilities will have a bearing on fire escape, and whether the provision of these facilities will increase the gross floor area of the building, and so on. Practical difficulties and constraints may vary from case to case depending on the actual circumstances.
- (b) The Ten Steps co-published by the WHO and the United Nations Children's Fund (UNICEF) advises that every facility providing

maternity services and care for newborn infants should comply with the requirements outlined therein.

To implement the recommendations in the Ten Steps, the Department of Health (DH) has formulated a Breastfeeding Policy and provided training for nurses and medical practitioners of Maternal and Child Health Centres so as to equip them with proper knowledge and skills to counsel mothers on breastfeeding. In addition, the Hospital Authority (HA) has developed a set of breastfeeding manual for its Obstetric and Paediatrics Units to provide its staff with clear and standard guidance on breastfeeding. Their health care personnel are also provided with training courses on breastfeeding so as to empower them with adequate knowledge to help mothers breastfeed their babies. Guidance on breastfeeding is also available for mothers when they receive antenatal out-patient services provided by the DH and the HA. Assistance on breastfeeding will be provided to them when they are in delivery rooms and postnatal wards. Mothers will also be referred to breastfeeding support groups after discharge.

The DH also encourages all hospitals to promote proper use of breastmilk substitutes in compliance with the International Code of Marketing of Breastmilk Substitutes (the Code) promulgated by the WHO and the UNICEF. In addition, the HA set up a Baby Friendly Hospital Steering Committee in 2002, which is responsible for formulating breastfeeding strategies for hospitals under the HA. The Committee is now considering purchasing milk powder by tender and requiring the milk powder suppliers to observe the Code by using appropriate means to market their breastmilk substitutes.

- (c) The DH has, in collaboration with the HA and other stakeholders, promoted the benefits of breastfeeding through various channels, including offering advice and relevant information on breastfeeding to pregnant women, producing Announcements in the Public Interest for broadcast on television and radio, producing leaflets and VCDs, organizing workshops and seminars on breastfeeding for both pregnant women and mothers, setting up promotional booths in baby product fairs to promote breastfeeding and organizing other promotional activities. The DH will continue to work with other stakeholders in an effort to encourage more mothers to choose breastfeeding.

### School Dental Care Service

14. **MR LI KWOK-YING** (in Chinese): *President, regarding the School Dental Care Service administered by the Department of Health (DH), will the Government inform this Council:*

- (a) *of the number and percentage of primary school pupils who participated in the aforesaid service in each of the past three years;*
- (b) *of the details of the publicity and promotional activities conducted to enhance the knowledge of school children on oral hygiene, and the amount of public expenditure incurred annually; and*
- (c) *whether it will consider extending the coverage of the aforesaid service to secondary school students; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese): President, according to the findings of a territory-wide Oral Health Survey conducted in 2001, the oral health status of Hong Kong residents had been improving steadily and the level of tooth decay among 12-year old students was on the low side in comparison with that of other places.

- (a) In each of the past three years, the number and percentage of primary school students participating in the School Dental Care Service are as follows:

<i>School year</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
Number of participants	426 530	413 919	398 301
As a percentage of total number of primary school students	90.3%	91.4%	92.7%

- (b) To enhance the knowledge of pre-school children about oral health, the Oral Health Education Unit (OHEU) of the DH has been promoting the "Love Teeth with Your Kids" programme for seven consecutive years. The programme provides oral health education for over 100 000 children in kindergartens and pre-school centres, which amount to 80% of the total number of pre-school children in the territory. On top of this, the OHEU has also strengthened its



outreach health education service by arranging an "Oral Health Promotion Bus" to visit primary schools across the territory to promote oral health.

Since 2004, an annual "Love Teeth" Campaign has been launched by the DH with the objective of facilitating the development of a correct tooth cleaning concept among the public and teaching them the proper tooth cleaning techniques. Apart from this, the DH updates the webpage of the OHEU from time to time, and has put in place a 24-hour interactive Oral Health Education Hotline, through which the public can have ready access to oral health information.

Since the expenditure of the above programmes are covered under the vote for oral health education of the DH, a detailed breakdown is not readily available. The overall actual expenditure of the DH's work on oral health education in 2004-2005, 2005-2006 and 2006-2007 are \$29 million, \$27 million and \$23.6 million respectively, and the allocation for 2007-2008 is \$21 million.

- (c) In order to ensure that school children will continue to take care of their oral health after they have moved on to secondary schools, the OHEU of the DH has developed a "Teens Teeth" oral health promotion programme for secondary school students. Participants are trained to organize various activities to promote oral health to their schoolmates and to teach Secondary One students the correct tooth cleaning techniques. As for the proposal of providing school dental care service to secondary school students, the Government will listen to the views of the dental profession. At present, there has yet to be any plan on the matter.

### **Payments by Octopus Cards**

15. **MR JAMES TO** (in Chinese): *President, given the growing popularity in payments by Octopus cards, and the number of cases of patients defaulting on drug charges has dropped by 80% after the introduction of Octopus payment machines by the Hospital Authority (HA), will the Government inform this Council:*

- (a) *of the number of public service organizations which accept payments by Octopus cards;*

- (b) *whether the Government has discussed with the Octopus Cards Limited (OCL) extending the usage of Octopus cards so that the public may pay tunnel tolls and various public utility bills at post offices, as well as hire charges for venues under the Leisure and Cultural Services Department (LCSD) by Octopus cards; if it has, of the progress of the discussion; if not, the reasons for that; and*
- (c) *given that the OCL's representatives had joined the delegation led by the Secretary for Commerce, Industry and Technology to attend the Pan-Pearl River Delta Trade Fair in Guangzhou in July 2004 to promote Octopus services, and that civilian exchanges between the Mainland and Hong Kong have become increasingly active in recent years, whether the Commerce, Industry and Technology Bureau and the Innovation and Technology Commission have assisted the OCL in promoting Octopus services in the Mainland over the recent years, with a view to facilitating Hong Kong people who go north for spending; if they have, of the details?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): President,

- (a) According to information from the OCL, payments by Octopus cards are available at over 400 different service providers including transport services, carparks, convenience stores, supermarkets, fast food chains, bakeries, leisure facilities, cinemas, personal care stores, vending machines, and so on. Public service organizations which accept payments by Octopus cards include the major public transport operators such as the railway, bus and ferry companies. Payments by Octopus cards are also accepted for certain charged services provided by the HA and government departments such as the LCSD, the Companies Registry and the Hong Kong Police Force.
- (b) The Government has discussed with the OCL on the feasibility of using Octopus cards for payment of government tunnel tolls. Under this payment mode, a motorist is required to stop the vehicle at a toll booth and place the Octopus card at the card reader to effect payment. The toll booths have to be manned for ascertaining toll payment by motorists. For tunnels with differential tolls on different classes of vehicles, toll collectors also need to input the

proper toll amount to the card readers to activate the payment process first. Thus, the time required would not be shorter than using the Exact Toll lanes. Also, if there are incidents of negative balance in Octopus cards, vehicles not stopping close enough to card readers or Octopus cards accidentally dropped, and so on, the time required will be lengthened and hence affect the flow of tunnel traffic. After careful examination, the Government is of the view that the Octopus system would unlikely bring about additional advantages from both the traffic management and cost-effectiveness perspectives.

For the counter collection of payment for government bills provided by Hongkong Post, Hongkong Post has previously explored the provision of Octopus as a payment option for collection of government bills and utility bills. However, as the majority of government bills (such as tax and rates) are not of a low value, in view of the considerable recurrent commission fees charged by the OCL based on the transaction value, that is, the amount of payment per bill and the substantial one-off set up cost, Hongkong Post has not pursued this option further. It should however be noted that various payment methods are already available for settling government bills. Payment of government bills at post office counters can be made in cash, by cheques or through EPS. Alternatively, instead of paying in person at the counters of post offices, members of the public may settle the bills by electronic means including autopay, PPS, automated teller machines and Internet banking services.

As regards premises managed by the LCSD, at present, members of the public can use Octopus cards to pay for admission fees or hiring charges at swimming pools open to the public and 26 leisure venues. The LCSD has planned to install Leisure Link self-service kiosks at 50 leisure and cultural venues within this year where members of the public can use Octopus cards to pay for hiring of leisure venues and enrolment in leisure programmes. Apart from leisure venues, Octopus cards are accepted at the LCSD's public libraries for payment of photocopying charges. The LCSD is also planning to extend the Octopus card service to payment of overdue fines, reservation fees for library materials and replacement charges for library cards.

- (c) As advised by the relevant bureau, the OCL gave a presentation on its services at the Pan-Pearl River Delta Trade Fair held in 2004, at the invitation of the Hong Kong Trade Development Council. Where appropriate, the Government would provide assistance to the OCL in promoting the application of reliable and convenient payment services for the public locally and across the border. For instance, to facilitate cross-border activities of residents in Hong Kong and Shenzhen, the Shenzhen branch of the Peoples' Bank of China and the Hong Kong Monetary Authority have been actively promoting the use of Octopus cards in Shenzhen. In 2006, the relevant parties decided to introduce Octopus cards to Shenzhen's retail sector. A fast food chain then became the first Octopus-enabled retailers in Shenzhen in August 2006.

### **Monitoring of Use of Donations of University of Hong Kong**

16. **DR KWOK KA-KI** (in Chinese): *President, will the Government inform this Council whether it knows who is responsible for approving and monitoring matters concerning the use of donations received by the University of Hong Kong (HKU) as a whole and by its individual faculties, including the Li Ka Shing Faculty of Medicine; whether the University and its faculties, including the Li Ka Shing Faculty of Medicine, have set up any committees to deal with such matters; if they have, of the membership list(s) of such committee(s), the number of meetings held in the past five years, details of the review(s) on the use of donations and the specific recommendations, and the progress of implementing such recommendations?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): President, all institutions funded by the University Grants Committee (UGC), including the HKU, are autonomous statutory bodies governed by their respective ordinances. They enjoy considerable autonomy in the management of their internal affairs and finance, including approving and monitoring matters concerning the use of donations received by the institutions. For this reason, the Administration and the UGC do not possess information on the internal mechanisms for approving and monitoring the use of donations by the HKU and its individual faculties. On the specific issues raised, the UGC has obtained information from the HKU which is set out in the ensuing paragraphs.

- (a) The HKU has established its own guidelines and mechanisms for approving and monitoring the use of donations. These guidelines and mechanisms provide, *inter alia*, that:
- (i) donations must be used in accordance with the wishes of the donors and in relation to activities of the HKU;
  - (ii) usage of donations received should contribute to the enhancement of teaching, learning, research or overall development of the HKU;
  - (iii) donations should not come from sources known to the HKU as unethical/illegal, nor with conditions that affect the University in carrying out its functions fairly and impartially; and
  - (iv) prior approval from relevant authorities are required in respect of the setting up of scholarships, endowed professorships, and the usage of major donations made to the University.
- (b) The HKU has established different committees to advise on and manage the use of donations received for different purposes. These committees include:
- (i) scholarships committees on donations for scholarships;
  - (ii) management committees on donations for lectures and seminars;
  - (iii) an advisory committee on donations for endowed professorships; and
  - (iv) disbursement committees for major donations made to the HKU, and so on.

Depending on their nature, the composition of these committees may include representatives of donors, lay members of the HKU Council, the HKU Vice-Chancellor, or staff of the University. These committees meet whenever necessary.

- (c) The Finance and Enterprises Office of the HKU is responsible for ensuring that all expenditures (including expenditures relating to donations) are in line with the established regulations and procedures of the HKU. The Office is also responsible to the University Audit Committee (all members of which are not employed by the HKU) which audits the use of all University's resources including donations. For certain donations, the HKU will submit regular reports to the donors on the income generated, expenditure incurred and activities carried out in respect of the donations.

The HKU shall review and improve the current approving and monitoring mechanisms regarding the use of donations as and when appropriate.

### **Internship Programme Under Innovation and Technology Fund**

17. **MR SIN CHUNG-KAI** (in Chinese): *President, the Internship Programme (IP) operated under the Innovation and Technology Fund since July 2004 aims to provide funding support to universities for employing fresh graduates from tertiary institutions as interns to assist in research and development (R&D) projects funded under the Matching Grant for Joint Research Scheme (UIM) of the University-Industry Collaboration Programme (UICP) or the Innovation and Technology Support Programme (ITSP). In this connection, will the Government inform this Council:*

- (a) *given that the Government had indicated that it would review the IP two years after its implementation, whether the Government has completed the review; if it has, of the details; if not, the reasons for that;*
- (b) *whether it has studied the reasons for the downward trend in the number of IP applications in recent years (the numbers of applications received in the three financial years starting from 2004-2005 being 39, 12 and six respectively); if it has, of the results of the study; if not, the reasons for that; and*
- (c) *whether it has made any assessment on whether the IP can achieve its objective of nurturing professional research experts, which includes gathering relevant information (such as the percentage of*

*the number of interns who continued to work in the innovative technology sector among those who had completed the Programme successfully, their scope of work and employers' names) and examining the reasons for interns giving up the relevant research work; if it has, of the details; if not, the reasons for that?*

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

- (a) In late 2006/early 2007, the Administration issued questionnaires to the six participating local universities of the IP to collect their views and recommendations regarding the Programme's operation for reference in formulating its roadmap. All the universities opined that the IP had achieved its aims, that is, to provide opportunities for fresh graduates from tertiary institutions to acquire research/industrial experience at local universities/companies by participating in a project under the ITSP or the UIM of the UICP; to stimulate the interest of fresh graduates in applied R&D activities and help create a larger pool of research talents; and to further support local universities in undertaking applied R&D activities by funding interns for their ITSP or UIM projects. The universities also agreed that the IP should be continued and they offered many useful opinions over the Programme's eligibility criteria, internship period and the remuneration for interns. The Innovation and Technology Commission (ITC) is examining these opinions in detail.
- (b) The Administration noticed the downward trend in the number of IP applications and therefore has also consulted the universities on the causes of the trend through the questionnaire survey. Having summarized the universities' views, we believe that the decrease in the number of applications was probably due to the following factors:
- (i) Some of the project co-ordinators or principal investigators of the R&D projects approved after the launching of the IP may not have sufficient understanding of the Programme. In this regard, we have strengthened the promotion of the IP to the project co-ordinators and principal investigators of the R&D

projects. After the promotion, nine applications have been received in the recent two months.

- (ii) The IP was launched in July 2004 when the unemployment rate of Hong Kong was 6.8%. Since then, the economic situation and the employment market have improved gradually. According to the latest figures announced by the Census and Statistics Department, the seasonally adjusted unemployment rate from January to March 2007 was 4.3% (provisional figure). Today, the employment prospects of the university graduates have much improved and the opportunity for them to take up jobs other than those in R&D has also increased.
  - (iii) Taking into account the prevailing level of market salary for university graduates in 2004, the Administration decided to provide a maximum funding support of \$9,000 of the monthly basic salary plus employer's contribution to the Mandatory Provident Fund for each intern. With the continuous improvement of the local economy in the past three years, the employment conditions of the labour market may have also improved. The desire of university graduates to join the IP may be affected as a result.
- (c) According to the returns of the questionnaires submitted by the six participating universities, all of them considered that the IP has achieved its three aims, including the aim to stimulate the interest of fresh graduates in applied R&D activities and help create a larger pool of research talents. Also, as revealed in the evaluation reports submitted by the interns upon completion of their internship, over 90% of them agreed that the IP had aroused their interest in R&D work while 60% of them considered their industrial experience had been strengthened after participating in the Programme. Besides, the ITC has also conducted a survey targeted at the interns who have successfully completed their internship. Over 60% of the respondents indicated that they chose to continue to work in the R&D-related field in universities or the business sector. As to those who dropped out during the internship period, their evaluation reports revealed that the reasons for the drop-out were mostly related to their pursuance of further studies or being offered other employment opportunities.



## Air Quality Monitoring Stations

18. **MISS CHOY SO-YUK** (in Chinese): *President, currently, the Environmental Protection Department (EPD) has set up 14 air quality monitoring stations (AQMSs) in Hong Kong, among which three are roadside AQMSs. It has been reported that in the past eight years, the EPD had not reviewed the number of AQMSs in the light of the development of and population movement in Hong Kong. For example, the population in Tseung Kwan O had increased rapidly in the last decade, and the traffic volume had increased correspondingly, but the Government has not set up any AQMS in the district. In this connection, will the Government inform this Council:*

- (a) *of the criteria for determining the locations of AQMSs, and whether the factors of population and traffic volume are among such criteria; and*
- (b) *whether it has any plan to re-evaluate the locations of various AQMSs and increase the number of roadside AQMSs; if it has, of the details; if not, the reasons for that?*

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

- (a) In designing the air quality monitoring network and identifying the locations of the AQMSs, the Government needs to consider a number of factors, including the spatial distribution of the monitoring network, the coverage in different types of development areas (for example, urban areas, new towns and rural areas), local population, the distribution of traffic flow and pollution sources, the capability in monitoring regional air pollution, topography and meteorology.

Geographically, the current monitoring network, comprising 14 AQMSs, covers major areas from East to West and from South to North of the territory. Regarding land uses, it also covers different types of development, such as residential areas, mixed residential/commercial areas, mixed residential/commercial/industrial areas, rural areas and busy urban roadside areas. Therefore, the current air quality monitoring network is adequate in providing full range of data covering the lowest to the highest air pollution levels in Hong Kong as well as air quality information in different types of development areas. The

current monitoring network is fully capable of providing a true picture of the air quality in Hong Kong.

- (b) The EPD conducts annual reviews of the overall design and representativeness of the monitoring network. As mentioned above, the current monitoring network is adequate in reflecting the air quality levels of different types of development areas in Hong Kong, including typical roadsides with heavy traffic. Therefore, we do not have any plan to make changes to the monitoring network or to increase the number of roadside AQMSs.

### **Regulation of LPG Prices at Dedicated LPG Filling Stations**

19. **MR ALBERT CHAN** (in Chinese): *President, recently, some members of the public have relayed to me that liquefied petroleum gas (LPG) prices at dedicated LPG filling stations had increased in the first two months of this year, despite the fact that the average import unit value of LPG has dropped in recent months from its peak in January this year, and the difference between LPG prices at dedicated and non-dedicated LPG filling stations is widening. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the increase in LPG prices at dedicated LPG filling stations in the first two months of this year;*
- (b) *whether there are measures to regulate LPG prices at dedicated LPG filling stations; if so, of the details of such measures; if not, the reasons for that; and*
- (c) *whether it will adopt new measures to limit the increase in LPG prices at dedicated LPG filling stations; if so, of the details of such measures; if not, the reasons for that?*

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

(in Chinese): President, while non-dedicated LPG filling stations can change their prices freely at any time, LPG ceiling prices at dedicated LPG filling stations are adjusted according to a specified pricing formula in their operation contracts signed with the Government. The pricing formula comprises two elements, namely the LPG international price and the LPG local operating price. Based on the movement of the LPG international price of the preceding month, the ceiling prices at dedicated LPG filling stations are adjusted upward or downward every month. Regarding the LPG local operating price, movement

in the Composite Consumer Price Index for the previous year as published by the Census and Statistics Department will be used to adjust the LPG ceiling prices at dedicated LPG filling stations on 1 February every year.

In December 2006, the LPG international price rose by 11 cents. Under the LPG ceiling price adjustment mechanism, the LPG ceiling prices at dedicated LPG filling stations were increased by the same amount in January 2007.

In January 2007, the LPG international price was further increased by 24 cents. Meanwhile, the Composite Consumer Price Index for 2006 rose by 2% and the LPG price was increased by about 2 cents per litre accordingly. As a result, the LPG ceiling prices at dedicated LPG filling stations were increased by a total of about 26 cents per litre in February 2007.

When LPG international price subsequently fell by about 8 cents per litre in February and March respectively in 2007, the LPG ceiling prices at dedicated LPG filling stations were reduced by the same amount in March and April.

The above shows that LPG prices at dedicated LPG filling stations have always followed LPG international price movements to keep in line with the pricing formula specified in their operation contracts signed with the Government. Never have LPG prices at dedicated filling stations kept rising when LPG international prices were generally on the decline. During the past four months, LPG prices at dedicated filling stations were consistently lower than those at non-dedicated ones, and the price difference remained at about 20 cents. Please see the table at the Annex for details.

To help the trade have a clear picture of LPG price changes at dedicated LPG filling stations, details of LPG international prices and LPG ceiling prices at dedicated LPG filling stations are uploaded to the Electrical and Mechanical Services Department's website at <<http://www.emsd.gov.hk>> and posted at all dedicated LPG filling stations.

Annex

A comparison of average auto LPG prices:

	<i>Dedicated LPG Filling Stations (HK\$/litre)</i>	<i>Non-dedicated LPG Filling Stations (HK\$/litre)</i>
January 2007	2.98	3.20
February 2007	3.24	3.39
March 2007	3.16	3.29
April 2007	3.07	3.24

**Facilities Provided at Government Recreation Venues**

20. **MR FREDERICK FUNG** (in Chinese): *President, regarding the facilities provided by the Government at its recreation venues, will the Government inform this Council:*

- (a) *of the standards and procedures adopted for assessing the demand for various recreational facilities in different communities, and the criteria used for determining the types of facilities to be provided at its recreation venues;*
- (b) *of the respective numbers of pebble walking trails provided at venues managed by the Leisure and Cultural Services Department (LCSD) and the Housing Department (HD); as there are press reports that improper use of such facilities may cause injuries to the soles, whether the Government has studied the merits and demerits of such facilities before introducing them, and whether guidelines on their safe use have been posted in their vicinity, as well as whether it will remove these facilities; and*
- (c) *among the jogging tracks currently provided by the Government in its parks and other outdoor venues (for example, those along Tolo Highway and Shing Mun River), of the number and total length of those which are surfaced with vibration-absorbing materials, the respective percentages of these figures in the relevant totals, as well as the specific locations of such tracks; as there are press reports that knee joints are more vulnerable to strain from the impact of jogging on hard surfaces for a long period of time, whether the Government will consider surfacing all jogging tracks with vibration-absorbing materials?*

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

- (a) In planning the provision of district recreational facilities, the LCSD will take into account a series of factors including the preference of the local community for recreational facilities, the supply and utilization rates of the facilities currently provided by the LCSD in the district, the district population and its distribution, the standard for provision of recreational facilities recommended by the Hong Kong Planning Standards and Guidelines according to the

population of each district, the expectation of the District Council (DC), the supply of similar facilities by the private sector in the district and the utilization rates of these facilities. In drawing up the project scope, the LCSD will consult the DC concerned. Subject to the consent of the DC, the project will be implemented.

- (b) In response to the demand from the public, the LCSD has provided pebble walking trails in recreation venues under its management as an additional recreational facility for the public and a way to encourage them to do more exercises. Since the pebble walking trails were first introduced into the LCSD recreation venues in 1996, a total of 128 walking trails paved with natural pebbles have been provided in our venues for public use.

A User Guide has been posted at all venues with pebble walking trails to explain the correct way of using the trails and remind users to make sure that they are in the suitable physical condition and have the appropriate ability to use the facility. It is aimed to ensure good hygiene and the safety of the users when using the facility.

The LCSD has consulted the professional organizations concerned and the Department of Health (DH) on the provision of pebble walking trails. According to the information provided by the DH, no data indicates that there has been any report from the public of any foot illness or injury caused by the use of pebble walking trails. Therefore, there is no need to remove the existing pebble walking trails. As a considerable number of pebble walking trails have already been provided in various districts, the LCSD will only provide such trails in new projects or add the trails to the existing facilities according to the actual demands from districts.

The HD provides a total of 219 pebble walking trails in some of its public housing estates. With effect from September 2006, a Safety Guideline sign shall be installed at each of the newly-constructed pebble walking trails to remind users of the points to note, including how to use the facility safely, the types of people who are not suitable to use the facility, how to ensure good hygiene and when to stop using the facility. The HD is now arranging for the signs to be installed at the pebble walking trails built in the past. It is expected that the installation works will be completed in the coming

August. As these pebbled walking trails are popular among residents of the housing estates, the HD has no plan to close these facilities.

- (c) At present, the LCSD provides jogging trails in 67 parks, 50 of which have hard-surfaced jogging trails. The jogging trails in the other 17 parks with a total length of 8 223 m are paved with vibration-absorbing materials, which is a softer material. As for the list of venues with jogging trails paved with vibration-absorbing materials and the respective lengths of the trails, please refer to the Annex. The number and the length of these trails account for about a quarter of the total number and the total length of the LCSD jogging trails. There are no jogging trails along Tolo Highway and Shing Mun River Promenade under the Highways Department. The LCSD will consider the use of softer vibration-absorbing materials for constructing new jogging trails and repaving the existing ones in the parks.

Annex

#### Venues using vibration-absorbing materials

<i>Name of Venue</i>	<i>Length of Jogging Trail</i>
Happy Valley Recreation Ground	1 059 m
Victoria Park	625 m
Yau Ma Tei Service Reservoir Rest Garden	252 m
Sai Yee Street Garden	74 m
Shek Kip Mei Park	1 700 m
Cornwall Street Park	258 m
Po On Road Playground	150 m
Lai Chi Kok Park	600 m
Laguna Park	430 m
Shun Lee Tsuen Park	200 m
Kowloon Tsai Park	550 m
Hutchison Park	600 m
Wu Shan Riverside Park	600 m
Butterfly Beach Park	200 m
Ma Tin Road 5-a-side Football Pitch	275 m
Tsing Yi Promenade	300 m
Wai Ming Street Garden	350 m

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

**PRESIDENT** (in Cantonese): Bills. We now resume the Second Reading debate on the Import and Export (Amendment) Bill 2007.

**IMPORT AND EXPORT (AMENDMENT) BILL 2007****Resumption of debate on Second Reading which was moved on 18 April 2007**

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

**MR WONG TING-KWONG** (in Cantonese): The high operation cost as well as the high charges of, *inter alia*, air, sea and land cargo transport have posed a huge challenge to the competitiveness of the hauling industry in Hong Kong. The high costs not only reduce the overall cargo throughput, but also weaken the favourable conditions and edges Hong Kong possesses in developing the logistics industry. It is obvious that many cargoes have been lost to other ports as proved by the growth in the container throughput in the Mainland.

I have a local friend who is a businessman with a factory in Dongguan. The products produced in his mainland factory are exported through Shenzhen because the freight rate is cheaper than that in Hong Kong. He explained that as compared with the Kwai Chung Container Terminals in Hong Kong, the freight rate for a TEU is about US\$300 less at the Yantian Port. As he has cargoes for export every day, he can save over \$100,000 monthly and over \$1 million each year.

In recent years, China Customs has launched the China E-port and Automated Clearance System which have significantly increased the efficiency in clearance. In view of the dwindling trend of our container industry, the SAR Government has, as far as we know, put forward in recent years some policies to address the situation, including the setting up of an electronic advance road cargo

information system as a measure for customs clearance of road cargoes. The Chief Executive stated on 10 May that the SAR Government would invest over \$200 million to set up an electronic advance road cargo information system to provide a seamless platform for cargo clearance, with a view to enhancing the competitiveness of the logistics industry.

I believe implementing electronic customs clearance will facilitate cargo clearance, which can save freight time and enhance efficiency, and in turn help lower costs. This is in line with the proposal, tabled by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) last year, of promoting the sustainable development of the logistics industry by way of strengthening immediate transshipment. In respect of the arrangement on electronic customs clearance, we further propose that the two places should join hands in setting up a platform for electronic customs clearance and simplify customs declaration procedures in different areas within the region, so as to improve communication of information in the region and fulfil the need of transparency under modern logistics.

Moreover, we must have other soft and hardware facilities as supportive measures. For instance, planning should be carried out expeditiously on the Liantang Control Point and consideration should be given to extending the opening hours of the control points at Sha Tau Kok, Man Kam To and the Western Corridor which will be commissioned soon. The transportation network also needs to be strengthened so that the benefits of immediate transshipment will not be affected because of road networks being inadequate or unable to tie in with transport networks in neighbouring regions. We all know that the control point at western Shenzhen Bay will be commissioned in July this year. We anticipate that with its opening, our logistics industry can strengthen its connection with the Pan-Pearl River Delta Region. While saving time and cost, it can also help expand our logistics services to the western part of Guangdong and the western provinces in China, which will in turn facilitate the development of the logistics industry in Hong Kong.

On the other hand, as far as I know, organizations of container truck drivers consider the implementation of the measure concerned beneficial to the industry and they, on the whole, support this government measure. However, as the trades are mainly made up of small and medium enterprises or even one-man companies which do not even have an office, and many owners may not



even know how to operate a computer, it will not be easy for them to adapt to the change, and it is not their wish either to rely on the large companies. Moreover, it is not cost-effective to them to procure facilities for coping with the electronic customs declaration, which will increase their costs.

We do not want these small-scale trucking companies to close down just because they are unable to adapt to electronic customs clearance and thereby causing the industry to contract further, thus concentrating the business in the hands of a few large companies. This is the last thing we wish to see. They thus hold that the government departments concerned should give them more assistance and time to familiarize with the new measure.

With these remarks, Madam President, the DAB will support the Bill.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Commerce, Industry and Technology to reply.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, first of all, I wish to thank Mr WONG Ting-kwong for speaking in support of this Bill. I would also like to take this opportunity to thank all Members for their positive support for this Bill, rendering it possible to resume its Second Reading within a short time and hopefully be passed later.

The passage of this Bill, as well as the Import and Export (Electronic Cargo Information) Regulation later, will allow us to set up an electronic advance cargo information system for road cargoes. The system will facilitate us, together with the Mainland, in moving towards the goal of standardized electronic customs declaration. This is also one of the major points raised by Mr WONG just now. Electronic customs clearance, including a standardized customs declaration system with the Mainland, is certainly crucial to entrenching Hong Kong's position as an international trading and logistics centre.

Moreover, I wish to respond to a point raised in Mr WONG's speech just now. Prior to the full implementation of the regulation, we will have an 18-month transitional period for the industry to make full preparation. In fact, starting from next year, we will organize seminars for the industry, in particular the small and medium enterprises, on the new workflow, so that they can have actual practice during the transitional period. We will also implement measures to encourage the industry, in particular traders frequently using road transport for their cargo delivery, to make full use of the electronic system during the transitional period.

I hope Members will continue to support the Second Reading of the Bill. Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Import and Export (Amendment) Bill 2007.

Council went into Committee.

### **Committee Stage**

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

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

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Import and Export (Amendment) Bill 2007.

**CLERK** (in Cantonese): Clauses 1, 2 and 3.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1, 2 and 3 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

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

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

Import and Export (Amendment) Bill 2007

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

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

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Import and Export (Amendment) Bill 2007.

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Unsolicited Electronic Messages Bill.

**UNSOLICITED ELECTRONIC MESSAGES BILL****Resumption of debate on Second Reading which was moved on 12 July 2006**

**PRESIDENT** (in Cantonese): Mr Howard YOUNG, Chairman of the Bills Committee on the above Bill, will now address this Council on the Committee's Report.

**MR HOWARD YOUNG:** Madam President, in my capacity as the Chairman of the Bills Committee on Unsolicited Electronic Messages Bill, I now address the Council on the work of the Bills Committee.

The object of the Bill is to set up a scheme for regulating the sending of unsolicited electronic messages of a commercial nature and having a Hong Kong link. The Bills Committee has held 16 meetings and has invited the public to give views on the Bill. Twenty four organizations and eight individuals have made written submissions or oral representation to the Bills Committee. I shall turn to the major issues discussed by the Bills Committee.

Under the Bill, person-to-person (PTP) telemarketing calls are excluded from the application of the Bill. The Honourable WONG Ting-kwong and the Honourable Jasper TSANG hold the view that PTP telemarketing calls may cause as much, if not more, nuisance to a recipient as pre-recorded telemarketing calls. As a basic safeguard for the right of recipients of commercial electronic messages, PTP telemarketing calls should also be subject to the requirements of including accurate sender information in the messages and not concealing the calling line identification information in sending the messages.

As the Administration maintains its position that the proposed legislation should not regulate PTP telemarketing calls at this juncture, Mr WONG has proposed Committee stage amendments (CSAs) for consideration by the Bills Committee. Mr WONG's proposed amendments seek to amend clause 6 of and Schedule 1 to the Bill to the effect that PTP voice or video messages without pre-recorded or synthesized element are to be regulated, except where the messages involve PTP interactive communications made pursuant to a previous or current business or client relationship between the caller and the recipient.

The Bills Committee has listened to the views of the Administration and deputations from the direct marketing industry on the merits of Mr WONG's

proposed amendments and their concerns about the enforcement problems in relation to those amendments. The Bills Committee has also taken heed of Mr WONG's arguments, which were substantiated by the results of two relevant opinion surveys conducted in February and March 2007 by the political party he affiliates with.

During the deliberations of the Bills Committee, a majority of the members of the Bills Committee indicated that they needed more time to consider the relevant issues before taking a position on Mr WONG's proposed amendments.

Another major issue that the Bills Committee has examined is whether the proposed legislation should be binding on the Government. According to the Administration, currently 19 government bureaux and departments send out electronic messages to the public regularly in order to carry out or promote their work. Initially, the Administration refused to move CSAs to make the proposed legislation binding on the Government, giving the reasons that government bureaux and departments had been following the spirit of the Bill in sending electronic messages and that the Administration was not aware of any complaints about such government messages becoming a source of spam for the public.

In view of the Administration's position and having regard to the different approaches adopted in various ordinances for making regulatory provisions binding on the Government, the Honourable Emily LAU had proposed CSAs to the effect that the future Unsolicited Electronic Messages Ordinance will bind the Government, but neither the Government nor any public officer in the officer's capacity as such is liable to be prosecuted for an offence against the legislation. It was initially agreed by the Bills Committee that Ms LAU would move the CSAs in her own name. Eventually, the Administration has indicated that having regard to the good example which binding the Government would set for the community, the need not to delay passage of the Bill, and the fact that the Government would have no problem in complying with the Bill, it will incorporate the amendments proposed by Ms LAU as part of the CSAs to be moved by the Administration. Ms LAU and other members of the Bills Committee welcomed this move of the Administration.

As the Bill seeks to establish an entirely new regulatory scheme for commercial electronic messages, the Bills Committee has studied the approach and procedures to be adopted by the Administration for enforcement of the

proposed legislation. The Administration has advised us of its intention that the police would be responsible for enforcing Part 4 of the Bill while the Office of the Telecommunications Authority (OFTA) would be responsible for enforcing the rest of the Bill with the assistance of the police where necessary. In response to our request for consideration of reflecting this intended arrangement in the Bill, the Administration has explained that since the police have general powers over all criminal offences under the Police Force Ordinance, it would not be necessary to specifically spell out in the Bill that the police would be responsible for enforcing Part 4 of the Bill. Nevertheless, the Administration has undertaken to highlight the division of enforcement responsibility between the OFTA and the police in the Secretary's speech at the resumption of the Second Reading debate on the Bill.

The Bills Committee has considered the need or otherwise to include an express provision to oblige the Telecommunications Authority (TA) to conduct consultation with relevant parties in preparing codes of practice in respect of the application or operation of any provision of the Bill. The Administration holds the view that it is inappropriate to provide for statutory consultation, but has undertaken to consult the relevant Legislative Council panel, as well as the relevant industries and the public, in preparing the codes of practice and on their subsequent major amendments. The Administration has indicated that the Secretary will highlight this policy intention in his speech at the resumption of the Second Reading debate on the Bill.

Clause 33 of the Bill empowers the TA to issue directions to a telecommunications service provider for the purpose of:

- (a) facilitating the telecommunications service provider's compliance with the Bill or the regulations made under the Bill; or
- (b) enabling the TA or an authorized officer to perform any function under the Bill or the regulations.

In response to the Bills Committee's suggestion of adding a provision for the purpose of enforcing such directions, the Administration initially proposed that for non-compliance with such directions, telecommunications service providers should be subject to the same financial penalty as prescribed in section 36C of the Telecommunications Ordinance, which is: up to \$200,000 for the first occasion of non-compliance, up to \$500,000 for the second occasion, and up to \$1 million for any subsequent occasion.

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

Subsequently, some telecommunications service providers expressed concerns on the wide and non-specific powers conferred to the TA to issue directions to them and the heavy financial penalty that might be imposed on them for non-compliance with any such direction.

In the light of these concerns and taking into account the views of the Bills Committee, the Administration has agreed to amend clause 33 to clearly specify the purposes for which the TA may issue directions and to revise the proposed penalty level downward, which now stands at up to \$50,000 for the first occasion of non-compliance, up to \$100,000 for the second occasion, and up to \$200,000 for any subsequent occasion. Members in general consider the revised penalty level acceptable, while the Honourable SIN Chung-kai has indicated that he would need to consult the industry before deciding his position.

In response to the Bills Committee's concerns and suggestions, the Administration has also agreed to move amendments to safeguard the rights of affected persons in the course of enforcement actions. These amendments seek to expressly provide that:

- (a) in the proceedings where the TA seeks an order from a Magistrate requiring a person to give information or produce documents for investigation of a contravention or suspected contravention, the affected person would be given an opportunity to be heard and make representations at the proceedings; and
- (b) in the execution of a warrant for entry, search and arrest, the authorized officers should, upon request, produce the search warrant for inspection.

Madam Deputy, with these words, I would recommend support to the Second Reading of the Bill.

**MR HOWARD YOUNG** (in Cantonese): Deputy President, I have just spoken on behalf of the Bills Committee and would now express the views of the Liberal Party on the Unsolicited Electronic Messages Bill (the Bill).



The Liberal Party strongly supports the spirit and direction of the Bill. In recent years, these unsolicited electronic messages sent through faxes, mobile phones and e-mail have been increasing, causing ceaseless nuisance to consumers and members of the industrial and commercial sector, pushing up the operating costs of many enterprises substantially. I have learnt from certain large enterprises I am familiar with that they receive tens of thousands of junk e-mails each day, many of them being advertisements. Certainly, this time, the Bill only seeks to regulate faxes, telephone calls and SMS but not e-mails, for the regulation of e-mails is too difficult and a definition can hardly be drawn. Moreover, owing to the international nature of e-mails, regulation deems impracticable. However, with the continuous development in technology, I hope the authorities will work out ways to deal with other informative messages in future. Since electronic messages sent by SMS, mobile phones and faxes will be dealt with and put under regulation this time, the Bill has at least solved part of the problem and is geared in the right direction. We will thus support it.

Upon the passage of the Bill, the person concerned may choose not to pick up calls from unfamiliar numbers, automatically dialled calls, and calls without calling line identification (CLI) display. However, I have heard that some men do receive calls with no CLI display from their wives, so if they fail to pick up those calls, they will be in trouble. The problem of nuisance is a cause of concern, even if person-to-person (PTP) communications are involved — a point I have pointed out when I mentioned Mr WONG Ting-kwong's amendment earlier, the nuisance caused is particularly serious when we are overseas, for such calls may be sent to our mobile phones. If you choose to receive those calls, even if callers are talking gibberish, you have to bear the cost, for the network provider will charge you and you cannot make any claims. This is a problem.

We certainly understand, and the Government has mentioned, that if regulation is imposed on PTP calls, there will be difficulties in enforcement. As we move from no regulation to putting SMS, telephone calls and faxes under regulation, it will be more convenient for evidence collection if the scope of regulation is confined to machine-related messages. I also understand these points. However, we, the Liberal Party, consider that an open attitude should be adopted in combating nuisance of this kind. Though this is the first time we legislate on this, I hope the Government will undertake, in its response, to monitor closely the issue of mandatory display of CLI in PTP calls. It should

examine whether the nuisance has been reduced after the passage of the legislation, or that a large number of complaints are still lodged by the public. If the nuisance persists, the Government may have to take some actions proactively. I hope the Government is not thinking that everything will be settled upon the passage of the Bill. These are our opinions.

Second, I would like to point out that the combating of the so-called junk mails, junk phone calls and junk faxes is an international problem that Hong Kong cannot solve on its own. Many problems in the international community can only be solved with international co-operation. For major issues, such as anti-terrorism, money laundering, or for minor issues, relatively speaking, like intellectual property, the mere enactment of legislation by individual countries or districts is not a solution, for all these are international problems. Therefore, we hope that after the passage of the Bill, the Government will continue to negotiate with countries or districts which have not put in place regulatory mechanisms for these problems. Even for countries with sound mechanisms in operation, the Government should continue to negotiate and maintain a close relationship with them with a view to identifying ways to bring real improvement to our business environment, and to remove the nuisance caused by unsolicited electronic messages for all consumers using various kinds of electronic appliances.

Deputy President, the Liberal Party supports the various amendments proposed by the Government in response to Members' concerns. I so submit.

**MR SIN CHUNG-KAI** (in Cantonese): Deputy President, electronic message spam is causing enormous economic loss to society and a wide range of inconveniences and nuisances to users of telecommunications services. I think this requires no further explanation. I believe the general public, the information technology sector and the telecommunications sector, and even myself have been longing for this Bill. In fact, in terms of efforts made on anti-spam legislation on electronic messages, Hong Kong is a few years behind the United States, Australia, Japan, Korea and member states of the European Union. Today, I am really glad that we will soon proceed to the Third Reading of the Bill.

However, the enactment of new legislation is no — I repeat, no — guarantee of a problem-free state. It is anticipated that the authorities will

encounter many difficulties, some of which probably being caused by technological advancement, in enforcement. At present, some computer software which is available free of charge enables senders of electronic messages to conceal their IP addresses and thus prevent e-mail recipients from identifying the senders' identification. In other words, if a spammer sends electronic messages, such as e-mails, SMS and even multimedia messages and faxes, via the network, law-enforcement officers can hardly identify the IP address of the offender. It will thus be difficult for law-enforcement officers to gather evidence, not to mention making arrests.

Moreover, the difficulties we encountered in enforcement, to a large measure, are attributed to junk electronic messages from overseas. The authorities have drawn reference from the legislation of the Australian Government, incorporating the concept of "Hong Kong link" in the Bill, so that the Bill will target unsolicited electronic messages originated from Hong Kong and sent to Hong Kong from overseas. However, considerable difficulty will be encountered in enforcement in reality. I do not expect marked results. As the authorities have to overcome numerous hurdles in gathering evidence and initiating prosecution across jurisdictions, the lead time for investigation will increase. More so, there will be some measure of difficulty in bringing the offenders to Hong Kong for trial. I believe the new legislation can only provide a foundation for law-enforcement agencies in Hong Kong, allowing them to co-operate and exchange intelligence with overseas law-enforcement agencies. With regard to enforcement, the incorporation of the "Hong Kong link" concept may not necessarily produce significant effect in implementation.

In the United States, the legislation regulating spam electronic messages, the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act), came into effect in January 2004. However, according to the information available, as at October 2006, 75% of e-mails in the United States were spammed e-mails, and only 0.27% of these spammed e-mails met the requirements of the Act.

In Australia, the legislation targeting electronic messages spam, the Spam Act of 2003, was promulgated in April 2004. From October 2005 onwards, the Australian Communications and Media Authority verified spam electronic messages via a system called SpamMATTERS. By the end of 2006, more than 11 million reports on spam electronic messages were received in total. Despite that, only 10 warning letters were issued by the Authority to business

organizations, only 13 penalty demand notes were issued against the offence and only five cases were enforceable undertakings. As at December 2006, there was only one successful prosecution. This speaks volumes about the difficulty of law enforcement. Therefore, though the OFTA is conferred the power of enforcement upon the passage of the Bill, I believe our performance may not necessarily be able to surpass that of Australia, but I still hope the Government can do a better job.

Nevertheless, the overriding difficulty lies in the handling of the enormous number of complaints. The setting up of the "do-not-call register" has particularly led the public to think that they will be spared the nuisance of spam electronic messages all at once. Therefore, the public will be prone to lodge complaints to the authorities even on occasional receipts of unsolicited electronic messages, which will inevitably bring enormous workload to the authorities and cause administrative difficulties.

The experience of Australia and the United States can in fact give us some enlightenment. As I mentioned earlier, in Australia, the authorities had received over 11 million reports on spam electronic messages within a period as short as 14 months. In the United States, the Act was implemented in January 2004, but by June 2004, in a period of only six months, 428 000 complaints were received. I believe, in the case of Hong Kong, upon the passage of the legislation, if the Government does provide channels for the report of spam electronic messages, the number of complaints received will be in tens of thousands.

Given the tremendous workload, any resources mismatch will hamper the work on combating spam electronic messages, compromising the effectiveness of every endeavour we made. However, according to the information of the authorities, the anti-spam team set up by the OFTA responsible for enforcing the proposed legislation is only staffed by four employees. Even after the enactment of the Bill, the authorities estimated that only three to five additional staff would be employed to handle reports, complaints and investigation work. However, in view of the tremendous workload, the team is definitely understaffed. I do not want to see this team turned into a replica of the Tobacco Control Office (TCO). The helplessness experienced by the TCO in enforcement has fully reflected the difficulties encountered by front-line law-enforcement officers. In handling this legislation, we should avoid falling into the same old trap we experienced in dealing with the anti-smoking

legislation, which has rendered the legislation wholly ineffective. In addition to proactive consideration of allocating additional resources, the authorities should focus resources on the implementation of proposals now set out in the Bill, including the setting up of the "do-not-call" register and the stringent enforcement of regulations on sending electronic messages, and so on, to achieve remarkable results.

Deputy President, the enactment of legislation against spam electronic messages is a law long-awaited by the public and a matter of urgency. To effectively combat spam electronic messages, the problem of law-enforcement cannot be ignored and adequate resources must be injected into enforcement.

In this connection, I urge the Administration to monitor closely the difficulties in law enforcement. It should rigorously consider the injection of additional resources to support law-enforcement work. More so, under the existing resource constraints, resources should be concentrated on the good implementation of the existing proposals under the Bill.

Deputy President, there are certain controversial proposals in respect of the Bill, including the amendment put forth by one of my colleagues, Mr WONG Ting-kwong — I should not only say that he is my colleague, for he is actually my fellow villager — on the regulation of PTP telemarketing calls. I will elucidate the views of the Democratic Party when he proposes his amendment later.

Deputy President, I am very glad to see the resumption of the Second Reading of the Bill today. However, I hope that the Government will, in addition to stepping up its promotional efforts on the future effect of the Bill, do some expectation management, so to speak. Just like the examples of the United States and Australia cited by me earlier, we are now at war with technology, experiencing a difficult time. As a common saying goes "there are always tricks to exploit the loopholes". When the investigation of the enforcement agencies relies on IP address, some software designed for the concealment of IP address will be introduced, and the protocol design of the Internet is a case in point. Whatever endeavour we made, I believe it is no easy task to achieve results in this respect. However, I am the one who initiated all these. Back in 2003 and 2004, I had already urged the Government to legislate on this. In fact, in my view, the most important objective of enacting such legislation is to ensure that each place in the entire international community will

fulfil its own responsibility, we should thus prevent Hong Kong from becoming a so-called base for spam electronic messages. Actually, an increasing number of spam e-mails are originated from countries without regulation of spam electronic messages. I will not name them specifically, but Russia and a number of countries in Eastern Europe are some of the examples, and the situation in those places is even more serious.

Spam e-mails have in fact given rise to a lot of problems, and many so-called spyware or viruses are generated by spam e-mails. Therefore, if we have to combat these problems, co-operation with the international community will be a must.

Under the Bill, provisions involving extraterritorial jurisdiction, as I mentioned earlier, are the most difficult to enforce. In fact, how the Hong Kong Government can co-operate with overseas districts in future is a matter of concern. Basing on the experience of Hong Kong and its special situation, a relatively large number of spam electronic messages, e-mails in particular, in Hong Kong are originated from the Mainland and Taiwan. Let us talk about the situation on the Mainland first. Since an extradition agreement has not been put in place, it means even if law-enforcement action is taken under the existing concept on jurisdiction against certain e-mails of Hong Kong, we have no right to take enforcement action if the e-mail is from the Mainland. I should indeed say that the enforcement action taken would be futile. Therefore, the regulation on electronic messages will indeed put us in a dilemma. With the passage of the Bill, we will have raised the expectation of the people of Hong Kong, but in reality, they will continue to receive a large number of junk e-mails. However, there is some good news this time around, for the Government has accepted the views of the general public, including the setting up of a not-to-call list, which is a relatively significant improvement in respect of telephone messages.

I think, as I have said earlier, the question is where the resources should be placed. From the point of view of the people of Hong Kong, they consider that telephone calls are the major source of nuisance and fax during night-time ranks the second. With regard to electronic messages sent by e-mail, the number involved is certainly greater than the two former sources. But in fact, many telecommunications companies or software companies have introduced numerous so-called filtering software and helped users reduce nuisance in this aspect. Therefore, nuisance from telephone calls and faxes is of much greater concern to the public at present. I thus believe the setting up of the not-to-call list may

greatly reduce the nuisance caused. As for fax, early last year, the Government and the OFTA entered into an agreement with telecommunications companies, introducing the so-called line-cutting practice. If the authorities receive three complaints against a sender for sending spam faxes at night, the OFTA will cut the line of that sender. Upon the introduction of these administrative measures, the nuisance caused by junk faxes during night-time (in fact, not only during night-time) has reduced in comparison with the situation in the past, and telephone calls made by automated means have reduced. In these two aspects, the practice is helpful to a certain extent.

In respect of law enforcement in future, I therefore hope the Government may negotiate with the OFTA to focus on telephone calls and faxes, and so on, which the public have strong aversion, and give priority to the handling of these issues. In respect of e-mails, it is surely an ongoing job, and the most important thing is to prevent Hong Kong from becoming a so-called centre or hotbed of spam e-mails. Regarding these several points, I hope the Government can come up with more suggestions on law enforcement. I will give my detailed response to Mr WONG Ting-kwong's amendment later on.

In a word, the Democratic Party cannot support Mr WONG Ting-kwong's amendment today, but in the long term, the Government should also pay attention to and consider his amendment. I so submit.

**MR WONG TING-KWONG** (in Cantonese): Deputy President, all along, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has been sparing no efforts in safeguarding the public from nuisance caused by spam messages. As early as in 2005, we already expressed our concern about the increasing nuisance caused by telemarketing calls. At that time, Mr CHAN Kam-lam moved a motion debate on "Enhancing the regulation of commercial marketing practices" to urge for regulation through legislation; without any objection, the motion was carried with amendment. In 2006, the Administration submitted the Unsolicited Electronic Messages Bill (the Bill) to the Legislative Council. After one year of scrutiny, the Second Reading of the Bill is resumed today. The DAB supports the general principle of the Bill which has answered the aspiration expressed by the DAB for years.

The Government has proposed under the Bill that non-profit-making organizations should not be exempted from regulation, for the public is

supportive of regulating unsolicited electronic messages of a commercial nature. However, during the discussions of the Bills Committee, members have expressed worries that the coverage of the Bill may be too broad for this reason. We consider it necessary for the authorities to draw up specific guidelines to assist non-profit-making organizations in defining whether the messages they send out are commercial in nature, precluding them from falling foul of the law inadvertently.

With regard to the abolition of the retention period for unsubscription request, it was initially proposed under the Bill that the sender of commercial electronic messages should keep record for at least seven years. Subsequently, the Government adopted the views of the Bills Committee and the concerns of deputations to shorten the period of keeping such record to three years. We consider that the drafting principle of the Bill should on the one hand allow the persons affected adequate time to seek remedies and on the other minimize the cost incurred by enterprises. I believe the amendment can strike a balance between the two.

According to the information provided by the Government, the Office of the Telecommunications Authority (OFTA) will establish three "do-not-call" registers, one for pre-recorded voice or video messages, one for fax messages and one for messages through short messaging service/multimedia messaging service. However, to avoid abuse by spammers, a "do-not-call" register will not be set up for e-mail addresses, for this may otherwise aggravate the nuisance problem. We do understand and appreciate the explanation given by the Government, but it does not mean that the Government can then turn a blind eye to the problem of spam e-mails. Actually, in respect of unsolicited electronic messages, the nuisance caused by junk e-mails to the public is only second to that of telemarketing calls. We hereby urge the Government to face the problem squarely and examine how control over spam e-mails can be exercised in future.

With regard to the charge for access to "do-not-call" registers, the Government has stressed that it will by all means base on the cost-recovery principle in setting the charges, for this is an established and reasonable practice. However, we hope that the OFTA, which is empowered to collect the relevant charges, will not only base on the cost-recovery principle in drawing up the charging scheme in future, but will also consider the factor of minimizing the cost incurred by enterprises.



After listening to the views of the Bills Committee, the Government has agreed to propose amendments to clarify that an evidential burden, rather than a legal burden, is imposed on a company, partnership or director and partnership of unincorporated body that has committed an offence. According to the amendment, persons responsible for the internal management of a company involved in the offence may put up an excuse, but to allay the worries of the persons concerned, we think the Administration may consider drawing up guidelines to provide clear definition for exempted acts.

Deputy President, right at the beginning, I have already said that the DAB supports the general principle adopted by the Government in the enactment of this legislation, but we consider the exemption of PTP telemarketing calls from the regulation of the legislation requires further discussion. At meetings of the Bills Committee, I have repeatedly proposed proper regulation of PTP telemarketing calls and gained the agreement of some members of the Bills Committee. Unfortunately, the Government does not accept those views.

In February and March this year, the DAB conducted two surveys in succession. The findings revealed that over 80% of the public considered that telemarketing calls should provide callers' identities. Similarly, over 80% of the public considered that telemarketing calls should display the calling line information. These findings are sufficient proof of the overwhelming public support for DAB's proposal on proper regulation of PTP telemarketing calls. Since the Government has refused to propose amendment in this connection, I will personally propose an amendment on the premise of protecting the public against such nuisance.

I understand that we will encounter great difficulty in pursuing the passage of the relevant amendment. However, if the amendment is voted down, the DAB will still support the Bill to reflect the public's aspiration for regulation of spam commercial electronic messages. At the same time, I hope the Administration will undertake to conduct reviews and studies after the passage of the Bill and to extend the regulation to PTP telemarketing activities in future.

Moreover, to prevent any abuse of personal data of the public, we hope the Administration will examine with the Privacy Commissioner for Personal Data the authorization measures for personal data. At present, certain business organizations, such as credit card companies, banks and insurance companies, will embed the authorization clause on the use of personal data in their application forms, which will authorize their affiliated companies to use the data

of the applicants for marketing activities. As the authorization clause is inserted among other clauses and can hardly be discovered, more often than not, the applicant will unknowingly give a third party the right to use his or her personal data. But the authorization cannot be withdrawn. If the applicant wants to withdraw the authorization, the entire contract has to be withdrawn altogether, causing great inconvenience to the applicant. Therefore, we suggest that the authorities should examine whether or not legislation should be enacted to provide for the separate acknowledgement of the authorization for use of personal data in future business contracts, otherwise, the contracts will be considered null and void.

Deputy President, the DAB supports the Bill, but it will propose an amendment on the regulation of PTP telemarketing calls. I so submit.

**MR RONNY TONG** (in Cantonese): Deputy President, unsolicited electronic messages are usually known as spam. To send out such messages is a tort which will result in serious invasion of personal privacy. I consider it appropriate for the Government to enact legislation on this and we support the spirit behind the legislation. However, during the legislative process, two events happened and made me feel very uneasy.

Deputy President, the first thing is that during the course of scrutiny, the Government surprisingly told us that the legislation was not applicable to the Government. In other words, torts in the private sector will be regulated by legislation but torts by the Government will not. Furthermore, the Government blatantly said in public that many laws in Hong Kong were not binding on the Government, which had always been above the law. So, it is not surprising at all that this legislation cannot regulate the Government. The Administration further said that the Government had never violated the law, wondering why it was necessary to enact a legislation to regulate the Government.

Deputy President, apart from illegal parking and speeding, I have never violated the law. But I never dare say that the laws of Hong Kong are not binding on me. It is more disappointing that when the Government mentioned such nonsensical words, many colleagues agreed and supported the Government's position. At the meeting, we had had a heated debate and Ms Emily LAU, finding such situation absolutely unacceptable, proposed an amendment. I also strongly support her. I told Ms Emily LAU that we in the Civic Party would absolutely support her. We will help write the amendment if

necessary. But Ms Emily LAU did not need our help because she is very experienced and prepared her amendment.

Surprisingly, the Government said that it had changed its mind at the following meeting. It considered Ms Emily LAU's amendment acceptable and included it in its own amendments. This is not important. But the Administration's reason is shocking. Why? Because the Government said that it was ready to accept good advice and wrangles in the Legislative Council should be avoided, thus accepting Members' proposal to make amendment.

Deputy President, I am not trying to win the argument also after winning this battle. The problem is that the Government's reason has violated the spirit of the rule of law. The Government should be duty-bound to embrace the concept that the laws are binding on it. This is the Government's responsibility and attitude. It should not say that it accepted the amendment for fear of being scolded by Ms Emily LAU. I believe Ms Emily LAU will say whether or not she will continue to scold the Government when she speaks later. However, Deputy President, this is not a reason. The reason should be the fact that the Government should clearly understand the very basic spirit of the rule of law, that is, the Government is not above the law and should be regulated by the law. At least, we now have a happy ending because the Government has decided to accept Ms Emily LAU's amendment. This legislation has no more problems although problems still exist in other legislation.

Deputy President, we are now scrutinizing the legislation on racial discrimination and facing the same problem. The Government has also said, "Sorry, discrimination in the private sector is regarded as an offence but discrimination committed by the Government is not." In my opinion, the rule of law in Hong Kong after the reunification has been deteriorating. We now have a very capable Secretary for Justice. I very much hope that he can hear my speech so that the SAR Government's attitude towards the rule of law can be improved.

Deputy President, the second event which has made me feel uneasy is that the whole legislation initially did not have any provision governing person-to-person (PTP) tort or PTP communication. Deputy President, I believe most Hong Kong people will agree that unsolicited messages sent by electronic devices are annoying and it is even more annoying if such calls are made by people. Such torts are more annoying than messages sent by electronic

devices. Why does the legislation not impose regulation on this? The reason of the Government is that to impose monitoring on PTP communications may result in unemployment of many people. The Administration said that many companies were developing such business and they might lose their business if we stifled them.

Deputy President, I fully understand the Democratic Party's position. Mr SIN Chung-kai will explain their position later. We have also contacted friends in the electronic media and the electronic industry, in the hope that we can support their stance. However, Deputy President, we in the Civic Party have all along maintained the position that we will support the interests of the industry as far as possible. But when the interests of the industry are in conflict with the interests of Hong Kong people as a whole, we have to make a choice and strike a balance. We cannot protect the commercial interests of a handful of operators at the expense of the right to privacy of all Hong Kong people. In this regard, we consider Mr WONG Ting-kwong's choice is right. In the scrutiny process, I expressed my views which are consistent with those of Mr WONG's.

So, we in the Civic Party will support the DAB's amendment today. We consider the amendment necessary as it is impossible for us to have a "lame duck" piece of legislation, which will only regulate less serious torts but not those which are considered more serious in the people's eyes. In this regard, I hope I can make it clear here that we are not in the opposite side of the interests of the industry. Our long-standing position is that we have to make a choice when the interests of the industry are contradictory to the interests of the people as a whole.

Deputy President, before sitting down, I have to talk about the third amendment concerning that the OFTA can request the telecommunications service providers to provide information about invasion of privacy so that the OFTA can enforce the legislation. Deputy President, during that period, there was a great controversy and the industry had voiced their strong views and approached the Civic Party for support.

Perhaps let me give a brief explanation here. Deputy President, the key of this provision is whether it can be enforced in an effective way or not. Under the law, the telecommunications service providers are responsible for sending the electronic messages to the recipients. This is a legal obligation. In the process of making electronic communication, the relevant information is only known by

the telecommunications service providers. If prosecution is to be initiated under this law, their co-operation is needed. If they do not co-operate, the legislation will become a toothless tiger, unenforceable, unable to protect the people's privacy, and unable to deter the transmission of illegal electronic messages. So, to require or make telecommunications service providers to provide information to the OFTA in a proper and expeditious manner is a prerequisite. In this regard, there is an equivalent provision in the Telecommunications Ordinance which requires that under whatever circumstances, if a telecommunications service provider fails to provide information to the OFTA upon request, the financial penalty is up to \$200,000 for the first occasion of non-compliance, up to \$500,000 for the second occasion, and up to \$1 million for any subsequent occasion.

In this regard, the Government has proposed to introduce an equivalent provision in the Unsolicited Electronic Messages Bill (the Bill) empowering the OFTA to request the telecommunications service providers to provide such information. Similarly, there was a strong reaction from the industry on the ground that this is not their responsibility and the penalty is too harsh.

Deputy President, if we look at the amendment to clause 36A carefully, subclause (3) has made it clear that "The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that financial penalty." Subclause (4) has also made it clear that the Authority should give the telecommunications service provider concerned a reasonable procedure to make representations and the Authority should consider all representations made to him before making a decision on the financial penalty.

We consider that this provision has in fact provided proper protection. If we do not support the Government's amendment, thus turning the Bill into a "paper tiger" or "toothless tiger", I will consider that we have been doing a disservice to the people by wasting so much time on scrutinizing the Bill.

Deputy President, we in the Civic Party supports the Bill and all the amendments.

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

**MS EMILY LAU** (in Cantonese): Deputy President, I speak in support of the Unsolicited Electronic Messages Bill (the Bill). Deputy President, as many other colleagues said, I believe many people have been waiting for this law for a long time. Some Members said that this legislation had at least taken us four or five years starting from the point when the Administration began to start work on it. Even by taking a look at the reports by our Secretariat, we can see that the consultation began in 2004, thus reflecting very slow progress indeed. I wish the Secretary good luck today and the Bill can be passed smoothly. But I also agree to Mr SIN Chung-kai's query about whether or not people's expectations can be fulfilled.

According to the Administration's information, there are 10 million telephone and fax numbers in use — Does the Secretary have the latest figures? I hope he can tell us about this later. Subject to the passage of the Bill, the people, upon completion of the arrangement process, can call a hotline, saying that they do not wish to receive unsolicited electronic messages. In addition, a register will be set up. Deputy President, the Administration said that 120 000 applications can be dealt with daily. I hope the hotline will not be overloaded and have also asked whether there would be a possibility of overloading. The people may not be so eager to call the hotline but will expect that they will not suffer from such nuisance anymore after registration. The Administration also said that senders of commercial electronic messages should review the register once every 10 working days to see who have registered and stop sending messages to them. Secretary, I really hope that this can be achieved. Otherwise, you will certainly receive many complaints, that such messages are still received despite their registration. In that case, our efforts will be wasted. So, the Secretary should give people confidence in this aspect.

Besides, regarding non-profit-making organizations mentioned by a colleague just now, we have discussed in the Bills Committee whether or not they should be exempted from the regulation. But the Administration objected and refused to grant exemption on the ground that the focus was on the content of a message rather than the nature of the organization sending the message. Deputy President, what is it meant by content? It means a commercial electronic message. In other words, regardless of the nature of the organization, all commercial electronic messages will be subject to regulation and no exemption will be granted to non-profit-making organizations.

The Administration has also mentioned some situations for our consideration. For instance, some charitable organizations may engage in

commercial activities and it would be difficult to arrive at a consensus on what types of organizations should be exempted. So, the exemption of an organization may lead to disagreement of some people.

Deputy President, there is another point which I am particularly concerned, that is, the Administration has highlighted that, "for some types of organizations, such as political parties" — Deputy President, that means your party and other political parties — "there are no appropriate legal definitions in Hong Kong law." Everybody knows this because all political parties are "limited companies". However, I am very worried, hoping that such a power will not be abused in future. So, the Administration has made an assurance — in paragraph 33 of the report, it has clearly given us this assurance — enforcement of the legislation is limited to this area. However, who will enforce the law? It is the OFTA and the police who would conduct investigation after receiving a complaint. But I hope the Secretary will explain to your civil servants clearly that they have to understand the definition of "commercial electronic message" and investigation can only be made when the relevant definition is met. Otherwise, if the OFTA and the police conduct searches everywhere, the organizations concerned will be very "grateful" to the Administration. So, I wish to make my viewpoints clear.

Regarding Mr WONG Ting-kwong's concern about person-to-person (PTP) telemarketing calls, I am rather conservative and not as avant-garde as the Civic Party. Deputy President, it is because when the Bill was introduced and explained at the first meeting, the Administration said that the Bill would only deal with electronic messages rather than PTP telemarketing calls which would be considered in the next stage. This I accepted at that time.

In fact, compared with other regions, Hong Kong's telecommunication industry has developed rather well. I hope we can give the industry the maximum room of development. But I also agree with the views of colleagues that if the people feel annoyed about something ..... I was also a victim a couple of years ago when a telephone at my place rang every night. Why? Because it used to be a fax number. Later, I made a complaint to the telephone company and the telephone did not ring again after the number had changed. So, something is really an annoyance to the people. However, regarding PTP telemarketing calls, I have also received such calls and the Chief Executive also said that he had received PTP telemarketing calls on his visit to a mainland city. But I also understand that they have to make a living.

Mr Ronny TONG just said that I would scold the Government. In fact, I am very kind to the Government and do not scold it. I am most kind to the Government. Of course, we should be kind to the Government when necessary. I believe the Civic Party is also very kind to the Government in many aspects. In this regard, I also strongly support the Government. However, Mr WONG Ting-kwong is very unfortunate because he is being queried for the reason of proposing the amendment. I do not know his reason either. In a nutshell, I agree to Mr SIN's views and the Administration also said that a review of this would be conducted in future. Having proposed an amendment, Mr WONG will speak later on. We will then know that for many matters, enforcement is in fact very difficult and I am therefore rather conservative.

While I am being kind to the Government, I have not scolded the Government — Deputy President, I am just speaking a bit too loudly. Mr Ronny TONG has made a notice that I would scold the Government, but I do not. Why was the Government willing to accept my amendment? I insisted that the Government should be subject to regulation. Deputy President, your party initially said that regulation was not necessary. But why is it not necessary? Do you know why the Government said that it was not necessary at that time? According to the Government, it had not found any complaint about spamming by the Government and such problem did not exist. Your party then said that such a statement was correct and the DAB also agreed that no regulation should be imposed on the Government. However, the Civic Party, the Democratic Party and I disagreed and insisted on imposing regulation on the Government. I then drafted an amendment. Surprisingly, the Administration changed its mind a couple of weeks later. What made it change its mind? In fact, its explanation, which is very funny, is that it did not want to cause any hindrance to the smooth passage of the Bill. In fact, how could I have the ability to block the passage of the Bill?

Meanwhile, the Administration said that most importantly, it had to set a good example to the community, particularly to the industry. Deputy President, no one has raised any objection to this. However, a good example should not be set only for this piece of legislation, right? If the Government wants to set an example, it should do so for all the other Bills. I would like to ask the Secretary: How can we only set an example for a Bill about spamming? So, I support the Secretary's approach. This is a very good example, the first and the number one. However, an example should be set not just for this Bill.



Otherwise, when another Bill is proposed to the Administration in future, the Administration may say that the Bill will not be taken as a good example or other Bill will be taken as a bad example. If so, it will be very serious.

So, the Secretary has set a very good example. I do not know whether the Secretary is still in office after 1 July. Nevertheless, he has set a precedent for his successors. However, the example he set is only half of it. Why? Deputy President, the Secretary has usurped my amendment, preventing me from proposing it. With the assistance of the Legal Adviser, the drafting of the amendment, which should have been proposed by me, had been completed by me although thanks should also go to the Civic Party for their help. To my astonishment, the Administration said that it had to incorporate my amendment. In other words, the executive will absorb the legislature. Now I am unable to propose the entire amendment. Deputy President, what is the reason? We all know it. Because Article 74 of the Basic Law stipulates that Members are barred from making proposals on many matters. But these are Bills. But currently or since a few years ago, the Administration has expanded the scope of this provision to cover government policies and operation. In other words, Article 74 is expanded so that even the making of an amendment is not allowed. As DENG Xiaoping said, the disturbances will come sooner or later. The Legislative Council has also sought legal advice and hold different opinions from that of the Administration. But now the Secretary has obstinately usurped my amendment. Deputy President, I feel very indignant at this.

Now I cannot propose the amendment and really want to oppose his. He can hardly justify why he should snatch other's amendment. The Administration should in fact allow Members to propose their amendments. Deputy President, if consensus has been reached on some matter, I need not propose an amendment. Why? As I just said, some Members who opposed it — Deputy President, including your party — on seeing that the Administration had said that a good example should be set, what did Members do? In that case, Members will give support. However, is such a process like child's play? In fact, if an amendment is supported by all, it should be proposed by the Chairman of the Bills Committee, Mr Howard YOUNG. However, it has been usurped by the Administration. I have to express my great dissatisfaction to this.

However, I have to commend the Government on one thing. Deputy President, this is about a committee, the Unsolicited Electronic Messages (Enforcement Notices) Appeal Board. In the Bill, it is provided that members

of the Board are appointed by the Chief Executive and the Chairman will be appointed for a term of not more than three years. At that time, I asked what would happen to the term of other members because there are other members apart from the Chairman and Deputy Chairman. The Administration was ready to accept good advice and made relevant amendments so that the term of other members was also incorporated into the provision which stipulates that the three-year rule also applies. Of course, they can be re-appointed. But the Administration has also promised and I hope the Secretary will make it clear that the six-six principle will be upheld. In other words, those who are appointed should not be sitting on more than six government committees and should not serve in each committee for more than two terms or six years.

So, Deputy President, from my long speech, people should know that I am really very kind to the Government. But unfortunately the Government is not so kind to me and has usurped my amendment. I am not pointing an accusing finger at Secretary Joseph WONG. As I have said time and again, this actually involves the prestige of the Legislative Council. Otherwise, why do people think that we have made a lot of efforts in vain? Amendments proposed by Members, including Mr WONG Ting-kwong, as we all know, will certainly be negated. An amendment which will be passed and supported by the majority has long been usurped. When an amendment has really been usurped by the Administration, the headings of the newspapers on the following day will say that a Bill proposed by the Secretary was passed with full endorsement of all provisions and the Secretary was commended for his ability. However, if the amendment is proposed by a Member, it will be voted down. Such a practice is unacceptable. If a Member's amendment can win the support of the majority, it should be proposed by the Chairman of the Bills Committee or the Member concerned instead of being usurped by the Administration.

So, I do not consider such a practice agreeable. The Secretary is certainly unable to answer a question which covers a wide spectrum of issues, but he should answer why he has usurped my amendment. If the Secretary supports my amendment, it should be proposed by me and supported by the Secretary in due course. Will this not be much better? Why has the Secretary usurped it by adopting such a high-handed approach?

With these remarks, Deputy President, I support the resumption of the Second Reading of the Bill.

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

(No Member indicated a wish to speak)

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

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Deputy President, first of all, I must express my heartfelt thanks to Mr Howard YOUNG, Chairman of the Bills Committee on Unsolicited Electronic Messages Bill (the Bills Committee), and other members of the Bills Committee for so tirelessly bringing the scrutiny of the Unsolicited Electronic Messages Bill (the Bill) to completion. I am also grateful to the Members who have spoken. Although their views on certain contents of the Bill may be different from those of the Government, they basically agree that the Bill does carry a very positive significance and should thus be passed as early as possible. As a matter of fact, we have accepted most of the valuable suggestions made by the Bills Committee and amended the Bill accordingly. Later on at this meeting, I shall move the relevant Committee stage amendments (CSAs).

On the question of whether PTP telemarketing calls should be brought under the ambit of the Bill, I wish to reiterate that as we already mentioned during the Second Reading of the Bill in July last year, our main objective is that, while respecting and realizing the wishes of the recipients of commercial electronic messages, we should also reserve some room for the development of lawful electronic marketing businesses in Hong Kong. We maintain that it is necessary to strike a proper balance between the two. As a matter of fact, many Hong Kong enterprises rely heavily on electronic messages as a cheaper means of marketing their products and services. During the scrutiny of the Bill, the relevant marketing industries repeatedly explained their case to the Bills Committee, and also the Government. They hoped the Government could appreciate that electronic marketing-related activities were the main source of income for hundreds and thousands of employees in Hong Kong and thus refrain from hastily imposing any legislative control on such marketing activities.

(THE PRESIDENT resumed the Chair)

The Office of the Telecommunications Authority (OFTA) has been monitoring 200 telephone accounts without associated personal data since December last year. The assessment reveals that, on average, there is less than one PTP telemarketing call to a telephone account every month. For this reason, we hold that it is not appropriate to bring PTP telemarketing calls under the ambit of the Bill at this stage, so as not to interfere with normal electronic marketing activities. Naturally, we will continue to monitor the situation. Should such telephone calls come to constitute a serious problem, we will consider the possibility of bringing them under the ambit of the Bill.

On whether or not the Bill should be binding on the Government, we have accepted Ms Emily LAU's advice. But I must also make a clarification here. We have accepted Ms LAU's advice mainly because while her proposal will make the Bill binding on the Government, neither the Government nor any public officer in the officer's capacity as such is liable to be prosecuted. We think this is an important amendment that we can accept. We also hope that our acceptance of this proposal can bring forth a consensus in this regard. We must of course thank Ms LAU again for putting forward this proposal. Whichever Member has put forward the proposal, everything will be put down on record.

Subject to the passage of the Bill by the Legislative Council, we will draw up the Unsolicited Electronic Messages Regulation (the Regulation) shortly to set out all the supplementary rules on requiring commercial electronic messages to include the identity and contact information of the sender and the unsubscribe facility enabling the recipient to send an unsubscribe request. We hope that the negative vetting of the Regulation can be completed before the Council rises in summer, so that the software industry, electronic marketing trade and other industries related to the transmission of commercial electronic messages can know clearly all the detailed rules they must comply with. The OFTA will also draw up a code of practice to provide the relevant industries with practical guidelines on how they should comply with the requirements of the Bill and the Regulation. After completing the draft of the code of practice, the OFTA will consult the relevant panels of the Legislative Council.

As for enforcement, enforcement against fraud and other illicit activities related to the transmission of commercial electronic messages mentioned in Part 4 of the Bill shall be the responsibility of the Hong Kong police. And, the OFTA shall be responsible for enforcement of the remaining provisions of the

Bill. However, in order to facilitate the reporting of contraventions of the Bill by the public, the OFTA will become the first receiving station for reports on spamming. The OFTA shall refer all possible contraventions of Part 4 of the Bill to the police for follow-up. Incidentally, let me just respond to the question raised by Ms Emily LAU just now. Surely, when appointing social figures to committees, we will generally follow the principle that no appointee shall serve more than six years in any one capacity or as a member on more than six boards or committees at the same time. We will follow this general principle.

Madam President, I understand the very great public expectation regarding the Bill. Since the start of consultation, we have been receiving extensive support. We will do our best to include in the Bill measures that can effectively combat spamming in our view. However, we also realize that given the rapid advances in technology, the regulatory bodies of the Government, as rightly pointed out by Mr SIN Chung-kai, will find it rather difficult to catch up with the telecommunications advances occurring in the technology sector every day. We will nonetheless monitor the problems actively, including PTP spamming. And, we do not rule out the possibility of updating the Bill from time to time in order to cope with the latest developments. Therefore, I sincerely call upon Members to support the Bill and the CSAs I will move later on.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Unsolicited Electronic Messages Bill.

Council went into Committee.

### **Committee Stage**

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

### **UNSOLICITED ELECTRONIC MESSAGES BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Unsolicited Electronic Messages Bill.

**CLERK**(in Cantonese): Clauses 3, 4, 9, 11, 12, 13, 19, 20, 22, 35, 36, 41, 44, 47 to 50, 53, 55, 56 and 57.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 6.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider schedule 1 together with clause 6.

**CHAIRMAN** (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Secretary for Commerce, Industry and Technology, you have my consent.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider schedule 1 together with clause 6.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider schedule 1 together with clause 6.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

### **Committee Stage**

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

**CLERK** (in Cantonese): Schedule 1.

**CHAIRMAN** (in Cantonese): Both the Secretary for Commerce, Industry and Technology and Mr WONG Ting-kwong have separately given notice to move amendments to clause 6 and schedule 1.

**CHAIRMAN** (in Cantonese): Committee now proceeds to a joint debate. I shall first call upon the Secretary for Commerce, Industry and Technology to speak and move his amendments to clause 6 and schedule 1.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam Chairman, I move the amendments to clause 6 and schedule 1, as printed on the paper circularized to Members.

The amendments to clause 6 and schedule 1 are made having regard to the views of the Bills Committee and some of the trade associations. The amendments seek to clarify that television programming service and sound broadcasting service, whether or not licensed under the Broadcasting Ordinance and the Telecommunications Ordinance respectively, are exempt from the application of the Bill. Furthermore, commercial electronic messages issued at the request of recipients or information normally expected to be received following communications between a recipient and a sender are also exempt from the opt-out regime provided in Part 2 of the Bill. In response to the views of the business sector and with reference to some overseas anti-spam legislation, we



have agreed that it is unnecessary for a number of normal business communications, such as those relating to product maintenance or updated information, information relating to business transactions agreed between a recipient and a sender, employment-related information, and so on, to be exempted from regulation by Part 2 of the Bill.

In my speech during the resumption of the Second Reading debate, I have explained the Government's major considerations in not supporting the regulation of PTP telemarketing at this stage. I hope to point out once again that grave concern has indeed been expressed by two marketing associations about possible regulation of PTP telemarketing because of the possible impact on tens of thousands of employees relying on telemarketing as their major source of income. It is also estimated by the two associations that the economic value of the relevant activities reaches \$7.2 billion. The Government shares their view. Hence, I think that the Government and the Legislative Council should take into consideration that no negative impact should be produced by the passage of the Bill on employment opportunities in Hong Kong.

Another issue Members must consider is that the amendment to be moved by Mr WONG Ting-kwong later will subject the Office of the Telecommunications Authority (OFTA) to tremendous difficulty in law enforcement. To determine whether a message should be regulated by the Bill, the prerequisite is that the content of the message meets the definition of "commercial electronic messages". However, the contents of PTP telemarketing calls are bound to differ. Under general circumstances where the contents of dialogues are not recorded, it is simply impossible for the OFTA to collect ample evidence to confirm whether or not a telephone call should be regulated by the Bill and thus follow up all or most of the complaints received. In this respect, as pointed out by a Member earlier, the Government is obligated to ensure that the legislation enacted is enforceable. In the meantime, I hope Members can understand that the passage of this Bill seeks mainly to give priority treatment to pre-recorded electronic marketing messages. Meanwhile, it has also been pointed out by a Member that enforcement in respect of e-mail, also covered by the Bill, will also encounter difficulty. Against this background, we hope that the legislation, when implemented, can demonstrate that the Government can carry out enforcement effectively in the area considered to be the most important and of the greatest concern to the public. Therefore, we do not hope to introduce provisions considered by us to be hardly enforceable at this stage. This will, on the one hand, undermine the utilization of resources

and, on the other, greatly weaken the capabilities of the OFTA in enforcement, thereby affecting public confidence in our law-enforcement capabilities.

However, I have to reiterate that I fully appreciate and understand that the amendments proposed by Mr WONG Ting-kwong, who hopes to provide recipients with more information, are well-intentioned. I also fully understand that some people might still receive PTP telemarketing calls, even though the number of these calls might probably be very small. I have often received such calls at midnight during my overseas official trips. Hence, I fully appreciate the reasons for moving the amendments. However, I still hope Mr WONG and other Members can really consider and recognize that it is most important to deal with, in particular, pre-set or machine-generated nuisance messages. Here I undertake that, after the implementation of the legislation, we will continue to monitor the situation. After a period of time, if the problem is still considered serious and there is consensus in society that PTP commercial electronic messages should be regulated as a further step, I will definitely be very pleased to continue to discuss with Members of the Legislative Council and formulate some reasonable and feasible proposals.

I implore Members to support and endorse the Government's amendments to clause 6 and schedule 1, which are supported by the Bills Committee.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 6 (see Annex I)**

**Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): I now call upon Mr WONG Ting-kwong to speak on the Secretary for Commerce, Industry and Technology's amendments as well as his own amendments, but no amendments are to be moved by Mr WONG at this stage.

**MR WONG TING-KWONG** (in Cantonese): Madam Chairman, Honourable Members, please imagine the situation, which the Secretary has also mentioned earlier, where your mobile phone suddenly rang when you were reveling in a

dream out of town on a business or overseas trip. Half awake, you answered the call and immediately found out it was only a cold call or a telemarketing call. I had that experience before. Then, I asked the caller, "Gee, can you not distinguish the call tone between local and roaming calls when you called?" But surprisingly the caller replied that, "I can ring you up as long as your mobile phone is switched on." This is really too much. (*Laughter*) Regarding this kind of telemarketing calls, I believe most Hong Kong people will certainly find them very disturbing. Only the authorities think that the situation is not very serious, and can be put under observation before any action is required. We have indeed waited for too long before the tabling of this Bill, yet there is such a huge gap to be filled. I think that my amendments are founded on the aspirations of a large number of people.

Today, while proposing this amendment in the Legislative Council, I support the general principle of this government Bill, only that a provision is proposed to be added to regulate person-to-person (PTP) unsolicited electronic messages. Only PTP telemarketing calls will be subject to regulation whereby callers are required to disclose their identities and should be prohibited from concealing their numbers, and that is all. I am not requesting the imposition of regulation on everything, but simply the display of caller number. I think it has struck a balance between the interests of the industry and the public without stifling the development of the industry concerned.

In order to gain a better understanding of the community's attitude towards PTP telemarketing calls, the DAB has conducted two telephone surveys in February and March. The survey findings are consistent in that 75% to 80% of the public consider that regulation is required. During the deliberation of the Bills Committee, I met with the representatives of two organizations, namely the Hong Kong Call Centre Association and the Hong Kong Direct Marketing Association, as well as a number of groups representing small and medium enterprises (SMEs). After meeting with the representatives of the two abovementioned associations, I realized that they actually do not mind disclosing their identities in the course of promotion, yet they have hesitation in displaying their numbers.

I explained to these two associations that the amendments would exempt calls made on clients currently doing business with them from the requirement of caller number display. Exemptions will be provided. In other words, exemptions will be provided for calls on clients currently doing business with

them. Let me quote a simple example. As soon as I joined a group tour for my wife, she has business relationship with the travel agency concerned. It is therefore legitimate for the agency to ring her up and promote its travel packages without displaying its phone number. Why? Because my wife has joined the group tour organized by that agency, a business relationship is therefore established between them.

The two associations are also concerned about the requirement of caller number display. They said that sometimes the calls were not necessarily made in Hong Kong, but from abroad, given that the call centres were not set up in Hong Kong. The question concerning whether or not caller number is displayed is different from whether or not it can be displayed. If the caller deliberately conceals his number, he can do so by adding 133 in front of the call number. This is, however, totally different from the failure of the caller to display his number in the long distance service network. If the failure of the caller to display his number is attributable to the long distance service network, the caller should not be blamed and there is no violation of law.

This is precisely why the Secretary mentioned earlier that some Legislative Council Members, especially those representing various trade unions, are worried about the great impact on job opportunities. The two associations even mentioned its impact on the jobs of 33 000 people. Just as I said earlier, since many call centres are out of but not in Hong Kong, it is therefore the overseas rather than local job opportunities that are being affected. Madam Chairman, this is the worst part of it.

As pointed out in the submissions made by the two associations in December last year, with particular reference to a survey conducted in the United Kingdom, there are 33 000 people engaging in the interactive communications industry in Hong Kong and each generating \$240,000 per annum in sales activity. The annual income generated by the industry therefore reaches as high as \$7.92 billion, which is an astonishing figure. Nonetheless, in my opinion, it is not entirely true and is even misleading and twisted. This is not the case at all. According to them, such cold call centre is nowhere to be seen in Hong Kong. If I have a chance of visiting these centres, I do wish to see for myself how "magnificent" it will be to have 33 000 employees. Yet, there is no such centre in Hong Kong. This is actually misleading. So, Members from the labour sector can therefore rest assured that employment opportunities in Hong Kong will not be affected. This is indeed nonsense.

Furthermore, I also explained that my proposed amendment is indeed a win-win proposition. If the caller number can be displayed, the operators concerned will not be as rude as I told Members at the beginning of my speech. I asked why the caller did not terminate the call when he heard the roaming call tone, he replied, "I can ring you up as long as your phone is switched on." He had really made me tongue-tied. If he were required to display his number, I would be able to complain against him and he would not have acted in such an extreme manner. Insofar as such complaint is concerned, how can we lodge complaints without the number of the caller? What complaints can we make? With the number of the caller, we can at least lodge a complaint with the available information.

After meeting with the SMEs, I noted that while they found it necessary to state the name of the company, they feared that the recipient would forget their telephone number. This is because the clients may call back to place orders, and it would be a loss to them if their client forgets their telephone number. Therefore, the SMEs considered it most important to have the caller number displayed for the sake of business, so as to inform the recipients of their number. This is indeed most welcomed as the recipient may call back by simply recalling the number of the caller in case they forget their number. These are the responses of the SMEs.

The objective of my amendments is to regulate the so-called "cold call" activities, that is, telemarketing calls made at random to mobile telephones of unspecified recipients for promotional activities. I believe Members should understand that these are most disturbing activities which we can hardly wait to impose regulation. We cannot wait for another year or any longer, and that regulation should be imposed at once. I hope Members will note that my amendments will not impose a total ban on PTP telemarketing. Rather, it is a very mild initiative requiring the callers to disclose their identities and refrain from concealing their numbers, and that is it. I do not think that my amendments will bring any adverse effects to either the industry or Hong Kong economy. It is nonetheless a win-win solution that will enhance the service quality and efficiency of the industry's promotional activities.

The two recent surveys conducted by the DAB revealed that 1 019 respondents considered that the nuisances caused by live calls and machine-generated pre-recorded calls are more or less the same; 37% of the

respondents considered live calls more disturbing and 40% considered pre-recorded calls more disturbing. Both types of calls are equally disturbing and only a small difference separated them. Over 30% of the respondents considered that both pre-recorded and live calls have to be regulated as the extent of nuisance caused is the same.

The reason why the authorities oppose my amendments is the difficulties in enforcement. In fact, enforcement is no easy task. Just like the smoking ban ordinance passed a few months ago, the required enforcement work is also very difficult. However, for the sake of the people, we still have to get it done no matter how difficult it is. I believe the departments concerned will not find this matter difficult to handle. With the display of caller number, evidence is hence provided. At present, many mobile phones are built in with a recording function. So, if the voice of the caller can be recorded, coupled with the caller number, it would not be difficult to lodge complaints. Besides, telecommunications companies would keep records of all calls, which may show the origins and destinations of the calls. I believe Members should have read a lot of news about the police detecting crimes with the help of such information. An octopus card and a call record can be crucial evidence. Only if we have the will, I do not think it is so difficult to get things done.

Here, I implore all Honourable colleagues to seriously consider my amendments, which are mild and able to meet the aspirations of the public.

Madam Chairman, I so submit.

**CHAIRMAN** (in Cantonese): Members may now debate the original clause 6 and schedule 1 as well as the amendments jointly.

**MR SIN CHUNG-KAI** (in Cantonese): Chairman, I would like to take this opportunity to respond to the viewpoints raised by a number of Members on this issue.

First of all, I wish to respond to the queries raised by Mr Ronny TONG earlier. Mr TONG stated that the machine-to-person calls are actually torts, the proposed regulation should therefore cover PTP calls as well, which are also torts. According to this logic, is there a need for us to consider whether or not

the letters sent to us should also be subject to regulation? We have received complaints querying why spam mail instead of spam e-mails were not put under regulation at the same time. Certainly, the Bill has specified that the subject is electronic messages, where mail is excluded. The person who raised this point belongs to some so-called green groups, who considered that the regulation of mail was necessary in view of the massive felling of trees in Hong Kong.

Insofar as this Bill is concerned, why do we not support Mr WONG Ting-kwong's amendments at this stage? I must stress that we do not support Mr WONG Ting-kwong's amendments at this stage, and yet, I cannot assert whether or not the Democratic Party will press the Government for such regulation in conjunction with the DAB in future in view of the significant changes that may be brought about by rapid technological advancements. Firstly, insofar as this Bill is concerned, the Government has told the public right at the start that it did not cover PTP calls. Against the aspirations of the community, nuisances caused by PTP calls were not covered. On the management front, it is clear enough as PTP calls will therefore be ignored. The Secretary also mentioned the number of nuisance calls earlier, and in fact, the number of PTP nuisance calls is far less than machine-operated nuisance calls. To put it simply, it is a matter of cost. Once a computer program is created, calls can be made one after another, and may reach as high as 10 000 calls. If these 10 000 calls have to be made by man, the cost will be very high.

Chairman, a colleague has raised his hand — I thought it was a point of order. Colleagues may press the button to wait for their turn to speak.

Chairman, I must stress that the amendments proposed by Mr WONG Ting-kwong this time are neither fish nor fowl. Should regulation be imposed on PTP calls, I believe another round of consultation should be conducted to review the scope of regulation. The scope of regulation as proposed by Mr WONG Ting-kwong today mainly covers the display of caller number. Just as Mr WONG Ting-kwong said at the beginning of his speech, so did the Secretary, it was really infuriating to have the telephone ringing in the middle of the night. If the call that wakes you up in the middle of the night is made from a country where the caller ID cannot be transmitted, you can only remain infuriated in spite of the relevant enactment as nothing can be done about it. According to government information, only 30-odd countries are able to provide caller ID, and countries that are unable to provide such information actually outnumber those that are able to do so. In fact, even within countries that are able to provide

caller ID, roaming service may not be provided by the telecommunication companies there. I am aware that the community has higher aspirations now in view of the fact that more than 80% of the public wish to have PTP calls put under regulation as well. Yet, the provision of caller ID is not all they want, they simply do not want to receive anymore such calls.

Today, I am very pleased to hear Ms Emily LAU say, "To maintain a living". We cannot ignore the need of the people to maintain a living. I hope that the next time when the Hong Kong Call Centre Association (HKCCA) — I believe there may be staff of the HKCCA on the public gallery — organizes its annual dinner, Mr WONG Ting-kwong will be invited to be the Guest of Honour, so as to enable him to gain a better understanding of the employment situation of various sectors in Hong Kong and the volume of their activities.

Cost is something that cannot be ignored. In fact, insofar as the mode of marketing is concerned, will the passage of the Bill induce the companies to change the mode of marketing from machine-to-person to PTP? If the scale of operation is large enough, Miss CHAN Yuen-han and Mr LEE Cheuk-yan will certainly feel very happy because the employment situation may probably improve as a result. I, however, do not believe there is a great chance of this mode being adopted as the cost is comparatively higher.

In respect of the knowledge of call centres, there is a gap between Mr WONG Ting-kwong and I. There are still plenty of call centres in Hong Kong. Of course, I am not sure if the number has been exaggerated by the HKCCA, but the majority of them still remain in Hong Kong. Since their staff are trained up to be biliterate and trilingual, the job requirement is not in anyway low and is totally different from paging operators. Just as Mr WONG Ting-kwong said, while the call centres of pagers have moved away from Hong Kong, there are still a large number of telemarketing call centres here.

Today, I mentioned the enforcement difficulties during the first round of the debate. We must actually take into consideration the fact that, according to the paper provided by the Government, the manpower requirement of the Office of the Telecommunications Authority (OFTA) at this stage is "4+5", that is, nine persons, who will have to handle complaints concerning telephone calls, SMS and e-mails. How many people are engaging in such work? This is something that cannot be ignored. The OFTA has its own trading fund and government funding has not been made for monitoring this fund. I wonder if



the Government will allocate new money for this purpose. Meanwhile, however, there is no point of worrying as the OFTA has surplus, which is pretty substantial, and it can therefore employ more staff. To me, merely nine persons are definitely not enough for doing the work. In fact, more should be done by the Government.

Nonetheless, it may be too high an expectation to have caller number display put into practice, as this may give the public an impression that PTP calls will be subject to regulation after the passage of the Bill, and complaints can then be lodged against the nuisances caused by PTP calls. Actually, upon receipt of such complaint, consideration should be made to determine whether the call recipient is a client in accordance with law. As to the question of whether the complainant is a client of the caller, the case can be easily handled if he is a current client. What if he is not, but only a previous client of a bank, for instance, with which he used to have an account but it was later cancelled, so is he a client then? Current clients will definitely be covered, but how about those who were clients, say, five to six years ago? As a result, arguments may sometimes arise in Court and hence make enforcement difficult. I am not saying that regulation will not be imposed in future, but in order to put PTP calls under regulation, a holistic approach must be adopted. In the United States, the not-to-call list is not maintained by the Federal Communications Commission, but the Department of Commerce which is responsible for regulating PTP telemarketing activities. For this reason, we should look at the law in a holistic manner.

With regard to this Bill, the Government stated right at the start that only machine-to-person calls would be regulated, which certainly fails to meet the aspirations of the community. I agree with this. Yet, we can pool our resources to eradicate 80% and even 90% of the nuisance calls, if possible — because I believe the nuisances caused by pre-recorded calls is 10 times that of PTP calls due to the high cost. If we can successfully eradicate the nuisances caused by machine-operated calls, I believe the public would feel much better. I definitely dare not say they are totally satisfied.

Furthermore, I wish to point out that advancement in communications may bring about changes in the existing situation. I expect that with the popularization of IP phones, that is, Internet Protocol phones, in Hong Kong, PTP telemarketing activities may become even more rampant. Why does it seem that I have contradicted myself? In fact, the risk is there and this is why I

said no regulation is required today. But it does not mean that it is not required in future. It is because, just as Mr WONG Ting-kwong said, the cost of making long-distance telemarketing calls to Hong Kong is comparatively higher, but the cost of telecommunications will reduce when the IP phones come into use.

The cost of telecommunications will increase when telemarketing activities involve long-distance service, or just as Mr WONG Ting-kwong said, after the call centres have moved away from Hong Kong. Nowadays, the charge of outgoing calls from the Mainland to Hong Kong is not as economical as before because it may take 20 to 30 attempts before a PTP call can be successfully made. The rate of successful calls may be even lower for machine-operated calls. Cost is therefore a major consideration.

Earlier, the Government mentioned the concerns of two associations. According to the information provided by the HKCCA, insofar as the mainland market is concerned, the requirement for callers to refrain from concealing their identities will result in a lower response rate of clients. This is their concern as it will become very difficult for enterprises to approach their potential clients through telemarketing. Not only will the industry's operating costs increase as a result, enterprises will also be deterred from using PTP interactive means to promote their services, thereby resulting in a shrinking industry.

There is one thing we have to consider. Honourable colleagues, first of all, I must stress that staff of the HKCCA are not my electors. Nor am I their representative. So, please do not put on "tinted glasses" and think that I am representing them. They are not my electors either. But I find it worthwhile to speak for them. In fact, a large number of people are currently engaging in this industry. I am not representing the interests of any groups, but the community at large. Due to the pressure of rising costs, SMEs of a smaller scale have moved their operations out of Hong Kong.

I hope that the Government will conduct a more comprehensive study in the next stage following the enactment of the relevant legislation, to assess if the nuisances caused have been significantly reduced whereby leaving only PTP nuisance calls, and whether or not the community still finds the remaining PTP nuisance calls unacceptable or infuriating. Only by then will we need to consider ways to regulate PTP nuisance calls in a holistic manner, for instance, to regulate only the display of caller number, just as Mr WONG Ting-kwong said.

According to the survey findings of the Administration and that of mine, I learnt at a very early stage that it was the aspirations of the community to regulate PTP nuisance calls too. The point is that the display of caller number alone cannot meet the aspirations of the community, where people demanded a total ban on such calls. With regard to the banning of such calls, members of the HKCCA will be required to comply with the not-to-call list by then. In other words, after the passage of the Bill, Mr WONG Ting-kwong can simply have his mobile phone number listed on the relevant register should he not wish to receive anymore telemarketing calls. Members of the HKCCA must comply with the relevant requirement and refrain from making such calls. The nuisances caused will be greatly reduced as a result. You do have the right to do so.

In order to strike a balance, we must therefore take a holistic approach in imposing regulation. Should regulation be imposed on PTP calls, simply considering whether or not the display of caller number is approved is far from enough. For those who wish to be free from such nuisances, Mr TONG, you may have your mobile phone number listed on the not-to-call list after the passage of the Bill, such that you can free yourself from such nuisances. All well-behaved companies will, at least, comply with this requirement. If someone does ring you up to promote his product in an impolite manner and makes you feel enraged, he will fail in promoting his product eventually.

I so submit. I wish to stress that even though we cannot support Mr WONG Ting-kwong at this stage, his justifications do have merits and worth our consideration at a later stage. I hope that the Government will examine the regulation of PTP calls in great detail in future.

**MR LAU KONG-WAH** (in Cantonese): Chairman, I am not a member of the Bills Committee, however, I have listened carefully to the views and arguments presented by various Members. In particular, after listening to the speech given by Mr WONG Ting-kwong just now, I found that it is very well founded, well-structured and justified.

However, on listening to Mr SIN Chung-kai speak again and again, I found that today, in fact, he must have a very hard time and I also think that sometimes, supporting the Government can be hard work. Why was I so eager to speak, even though he had hardly finished speaking? Because I think his arguments are rather self-contradictory. If it is said that adopting Mr WONG Ting-kwong's amendments will lead to the loss of tens of thousands jobs, it

seems he lacks evidence. Of course, some members of the industry may have said this to him, however, the evidence is completely lacking. Yet, when Mr SIN was talking about unemployment, he cast doubt on Mr WONG Ting-kwong, saying that if Mr WONG's proposals were adopted, it would actually be very difficult to trace the source, that there would be a lot of difficulties and the effect would be limited. In that case, the problem of unemployment will not arise. According to Mr SIN's argument, will adopting Mr WONG Ting-kwong's amendments cause unemployment or will it be so difficult that it will not result in unemployment? This is the first contradiction.

The second contradiction is that, if Mr SIN thinks that members of the public are subjected to nuisance — this is the greatest issue and the main aim of the Bill — if you think that machine-to-people marketing will cause nuisance, why do you consider it unnecessary to take action to reduce the nuisance caused by PTP marketing? Are you adopting a double standard? Of course, Mr SIN Chung-kai may think that he is not opposed to doing so, since he added in the end that Mr WONG Ting-kwong's amendment was in fact very valuable and desirable, however, it should not be considered today. Why should it not be considered today?

The amendments proposed by Mr WONG Ting-kwong were approved by you, Madam Chairman. Originally, I thought that the President would not approve them and initially, the Government told us that it was unlikely the amendments would be approved but we could try. Chairman, being an astute senior, you approved them, so we proposed them. Therefore, Mr SIN Chung-kai, we have cleared this hurdle and it is all right if you support us today. The President approved them and the Government also thinks that they are necessary.

I find it strange because Secretary Joseph WONG said just now that when he was overseas, he had also fallen victim while he was sleeping. He said that he had also fallen victim. Secretary, if you have fallen victim before and so have many members of the public in Hong Kong, why do you not devise any strategy? If you have fallen victim before, you should devise a strategy. Although you are the Secretary, it does not matter if you do not devise any strategy. Even though the DAB wants to put in place a strategy, you do not accept it and wants to let the public continue to be victimized and to let you yourself continue to be victimized. This is unjustifiable and you are being contradictory. The Secretary and Mr SIN Chung-kai are both self-contradictory. Therefore, I cannot quite figure this out.

Of course, I appreciate Mr SIN Chung-kai's remark concerning gradual and orderly progress and it would be best if we can have gradual and orderly progress on everything. However, obviously, since we have already proposed the amendments — in fact, the legislation states from the outset that PTP calls are not regulated, however, this does not matter. We proposed amendments, the President approved them and that means they can be considered. If you think that our amendments are worthless and if you think that it is not necessary to pay any heed to the nuisance endured by the public, it is completely right for you to oppose it.

I am somewhat disappointed. Why is it that on this issue that has such a great bearing on public interest, the Democratic Party.....I do not deny that this may have some implications for the industry. We can discuss how great the implications will be but there will be some implications. However, is our prime consideration the interests of the industry or those of the public? This will be very clear if we weigh them up and this has nothing to do with the interests of political parties or groupings. Therefore, through the debate today, we will continue to lobby for the support of Members representing the labour sector and we are still soliciting votes in the hope that they will understand this rationale.

Ms Emily LAU also said just now that this is a labour and unemployment issue. I hope she will think again after listening to my comments. Ms Emily LAU often trumpets public interest, so where is she today? Why is she nowhere to be seen? Do you mean you have never fallen victim before? You have, have you not? You have fallen victim before and so have members of the public, so why do you not support such moderate regulation? It does not matter if this is only the first step. I agree that if Mr SIN Chung-kai can think of an even better and more radical amendment, it can be a second step and the DAB can lend you its support.

However, why is it that today, when we take the first step and put into practice the principle of gradual and orderly progress, you want to block this move? If the Democratic Party supports today's amendments (the Civic Party supports us and I am grateful for that), if the Democratic Party also gives its support on ground of public interest, the public will applaud and welcome this move. The Democratic Party also admits that the result of our survey shows that 80% of the public support this and the result of your survey also shows that the majority of the public support this too. From the angle of public interest, I cannot see any reason that you should oppose the amendments. Therefore, the only thing that is missing is your support and I hope very much that Mr WONG

Ting-kwong's amendments can be passed today. I am not saying that after the passage of the amendments, the nuisance can be completely eliminated. This will not be the case but at least, there will be some deterrent effect. I believe that the nuisance to the public will be reduced, but I do not know by how much.

Mr SIN mentioned making observations for a year before conducting a review. Secretary, it is possible to conduct a review after making observations for a year. Our amendments can first be passed, then we can see by how much the nuisance is reduced, how great the implications are and how many people have lost their jobs. If the implications are not very great and this move is very helpful to the public, we can take the second step, that is, the second step proposed by Mr SIN Chung-kai in the form of an amendment. There is no problem and we can do it step by step.

However, if the scenario turns out to be one in which the first step is blocked today, I think to members of the public who are enduring such nuisance, this is a neglect of duty. Today, we have proposed this amendment in spite of all the difficulties and I hope very much that Members will reconsider supporting the DAB's amendments. Thank you, Chairman.

**MR RONNY TONG** (in Cantonese): Chairman, speaking on this occasion, it looks as though I were finding myself in a historical moment and there is a change of roles because it so turns out that the Civic Party is fighting alongside the DAB and against the Government and the Democratic Party. I have waited for such a moment for three years because I have been yearning for the day when I can stand here to voice my support for a motion moved by the DAB that the Government finds unacceptable. Now such a day has dawned. Next, I wish I could see the DAB support an amendment moved by the Civic Party that the Government finds unacceptable.

Chairman, I wish to respond to Mr SIN Chung-kai's comments briefly. Of course, I hope that our good relationship will not be damaged because of this, however, I really think that there are some flaws in the logic of his arguments.

Chairman, to put it very simply, if a member of the public answers a call made to his mobile phone and finds that it is an unsolicited message, he really will not care whether it is a pre-recorded message or whether it is a real person that is speaking at the other end of the line. The greatest nuisance that he feels

comes from the fact that this is a call he does not want to answer. For no apparent reason, be it in the middle of the night or when he is dining or chatting with his friends, the phone suddenly rings and he has to answer it, and if the phone charge is calculated by the minute, he may have to pay quite a lot of money.

Chairman, logically speaking, this is unjustifiable. In addition, there is one point that we must understand and that is, this piece of legislation does not ban all unsolicited messages completely, rather, it is only laying down some regulatory requirements. Be it pre-recorded electronic messages or telephone messages delivered by real people, the requirements are in fact the same and that is, members of the public have the chance to decide whether they accept this kind of nuisance or not. We do not mean that PTP unsolicited messages will be completely prohibited whereas recorded electronic messages will be allowed. This is definitely not what we mean. Therefore, I think that in this regard, it seems that the position of the Democratic Party is incomprehensible.

Chairman, the Secretary said just now that one of the reasons for his opposition to this amendment was the difficulty in enforcement. Chairman, I have never heard before that this can be a reason for not enacting legislation. Firstly, as I said just now, we are demanding that regulation be imposed. If everyone in Hong Kong is law-abiding, the likelihood of having to mete out penalties or enforce the law is not great. In any event, even if the Government is correct in claiming that there are difficulties in enforcement, if it is an act that should be regulated, one instance of such an act is too many. Therefore, the authorities should not tell me that there are only very few messages related by real people and that there is probably just one such call in a hundred, for one instance is too many if it involves unreasonable acts that violate others' rights.

As regards the authorities' claim that there are difficulties in enforcement because there is no way to trace those people, Chairman, I believe this is not a reason at all. Why? Because basically, the original legislative intent is that it is hoped that members of the public in Hong Kong, including business organizations, will respect and abide by the law and we believe that the overwhelming majority of Hong Kong people will. Therefore, if the legislation exists and although the Government says that there is some difficulty in enforcement — and I do not accept this point, Chairman — assuming that there is indeed difficulty in enforcement, the very existence of this piece of legislation will surely reduce this sort of nuisance.

Just as Mr LAU Kong-wah said just now — Mr LAU is not in the Chamber now — I absolutely agree with his remark that we do not know how useful the enactment of this piece of legislation will be but it will definitely help. In pondering whether or not to accept these amendments, the overall interest of the Hong Kong public should be the prime consideration, as I said in my speech just now. Even if we can only make the Hong Kong public receive one nuisance call less, I think it is still worthwhile to do so. I believe that logically speaking, we should do so and so should we according to the legal spirit.

In view of this, I hope the Democratic Party can think twice or reconsider their position.

**MR CHAN KAM-LAM** (in Cantonese): Chairman, just now, I heard Secretary Joseph WONG say that there were probably very few acts of PTP marketing, however, he himself also admitted that when he was on overseas duty visits, he often received this kind of marketing calls. I remember that on one occasion, when our Chief Executive, Mr Donald TSANG, made a visit to the Mainland and when he was in front of the cameras of television stations, hardly had he sat down when his phone rang. He took out his phone, saying that it was probably just another marketing call. I still remember this television footage vividly. This happens to the Chief Executive as well as to the Secretary, so we can see that people find this kind of marketing calls a great nuisance.

Often, when we sat together to discuss this issue with government officials or members of the community, in fact, they all shared the feeling that they would receive this kind of phone calls frequently. No matter if such calls are placed by machines or real people, they are equally annoying. Of course, strictly speaking, we can say that this is a tort, the main reason being that when we answer phone calls, we do not expect this kind of calls, as a result, they make us suffer losses. Mr SIN Chung-kai asked if, in that vein, this meant that even mail had to be regulated. That is, should the indiscriminate posting of mail be regulated? I believe this analogy is completely incorrect. If I receive a letter through post, I can choose not to open it. If it is a marketing message, I can choose not to open it and just throw it into the waste bin. Everyone absolutely has the right to do so, however, this is not possible in respect of phone calls because they cannot be identified and here lies the problem.



People often talk about the opposition to the marketing industry, expressing their concern that the unemployment rate in the industry will rise after imposition of regulation and even the success rate of its employees in finding customers will decline. However, in reality, the reverse will be the case. Why? First, if we have caller display, people who receive the calls have the right to choose whether to answer them or not, do they not? They have control over whether to answer them or not, however, at present, the public are deprived of such a right. In addition, if it can be seen from the caller display that a call is a telemarketing call, we can press the button to reject it. This will also save the time of telemarketers, so that they can dial another number right away, will this not? However, if there is no choice and if a call is answered, these people may have to say a few words before we turn them down by saying that we do not have the need and will not buy their products, that we do not need a loan or an insurance policy, do they not? This will waste a lot of the marketing workers' time. Of course, they also waste a great deal of our time. Originally, they can make 200 calls each day but now, they can only make 20 calls because they have to say a lot before we turn them down. However, if we choose to press the button to reject the call, they can immediately dial another phone number, can they not? In fact, this will have the opposite effect of increasing their success rate and the number of calls they make to potential customers.

In addition, if this piece of legislation is enacted in this way, can it be enforced easily? The main problem lies in whether, given the way in which this piece of legislation or this control is formulated, can we or do we have ways to deal with this kind of so-called marketing calls according to the procedure laid down by the law? The present amendments proposed by Mr WONG Ting-kwong deal only with machine-generated or synthesized messages. This is in fact only the first step, a very simple step that allows a person receiving a call to choose whether to answer or not, is this not? However, more stringent control has already been implemented in overseas countries. As Mr SIN Chung-kai is well aware, marketing companies must be registered and then, they must obtain a specific phone number before they can operate. However, at present, no such requirements have been put in place in Hong Kong and I am only talking about letting me know the phone numbers to see if an incoming call is made by my acquaintances or business partners. If the calls are from unclear origins, I can choose not to answer, can I not? This will only give people receiving messages this kind of right. Without such a right, how can we get rid of such nuisance in our daily life?

As regards the so-called manpower and unemployment problems, there is actually no cause for concern because as long as an industry is successful, it will naturally develop and we do not have to regulate it. In fact, we hope that the business environment can even be freer. However, apart from this, it is really necessary for us to strike a balance. If they are concerned that their employment opportunities or success rates in soliciting customers will be affected due to the caller display, this shows that they also understand that their industry is intrusive, that they impinge upon other people's rights and they are not always welcomed. Since the public does not welcome it, why do we have to protect such a mode of operation? It is totally unacceptable for us to sacrifice the rights of the general public in order to protect the job opportunities of a small group of people. This is not right. From whatever viewpoint, I believe such a way of thinking is unreasonable.

In addition, as Mr SIN Chung-kai said, there is a trading fund under the OFTA on which its operation is based. The OFTA has very little manpower and if it receives this kind of complaints, it is incapable of handling them. However, this cannot be considered a ground. The manpower of our Police Force is also very limited, so does it mean that they do not have to track down criminals or perform their duties? The workload of maintaining law and order is also very heavy, is it not? Therefore, this cannot be a ground. As long as we believe that this piece of legislation protects the interests of an overwhelming majority of people and is reasonable, we should go ahead with it. As regards increasing manpower or other matters, they can be dealt with in other ways. It is even possible to consider the charges that can be increased when managing the trading fund. It is only necessary to levy a small charge and that will basically be enough.

In addition, if everyone does business according to the law, it is in fact not necessary to increase manpower or take any law-enforcement action. I believe it is only when there are a lot of marketing companies of this nature intent on doing business in illegal ways that there will be a lot of complaints. If all of us abide by the law, there will not be any complaint, will there? There will not be any problem. If all of us are willing to answer marketing calls, no one will see the need to lodge any complaint either. Therefore, I believe that our present amendment is in fact a very mild form of initial regulation. All that we hope is that the market will be more open and transparent to cater more closely to the needs of the ordinary member of the public.

The DAB has conducted several opinion surveys and indeed, we found that many members of the public also considered this kind of calls a nuisance. Moreover, the Democratic Party has also conducted a survey. Our aim in proposing these amendments is to truly reduce this kind of so-called nuisance phone calls. Therefore, we hope very much that the Government can take action in accordance with public opinion. In fact, our amendments will not affect the so-called policies because the Secretary also said that a review of this would be conducted in future. Why do we not deal with the problems we have identified now but have to leave them to a future review? Are we really going to wait until this problem has really ballooned before we deal with it, as Mr SIN Chung-kai said? Modern electronic communications will become increasingly advanced and he also anticipates that this type of PTP nuisance calls will increase. Why do we not deal with this issue even though we have anticipated it now? I do not understand the reason for this either.

I hope that on this issue, the Government can really consider the proposal put forward by the DAB. This is in fact a reasonable and justified course of action. I hope that other Honourable colleagues opposed to it can also support the amendments proposed by Mr WONG Ting-kwong. Thank you, Chairman.

**MR SIN CHUNG-KAI** (in Cantonese): Chairman, I now speak for the second time.

First of all, I wish to give an account on how this matter came about. About three or four years ago — it should be in 2003 — the information technology (IT) industry was beset by the problem of e-mails and that was how the problem of spamming arose. That was also the background for the CAN-SPAM Act of the United States, which came into effect on 1 January.

PTP marketing has existed for a long time, however, as a result of technological developments, a plethora of machine-generated calls are made to people. Even a lot of programs.....again, the programs written by the IT industry are exploited to make machine-generated calls to people. As a result, these excessive phone calls have become a major nuisance, so we have to examine this problem. In order to remedy this problem, should we not shoot a horse in order to capture the rider? What is the greatest nuisance of all? It is those machine-to-people electronic messages, therefore, this piece of legislation

targets machine-to-people electronic messages. Now, if this part of the problem can be successfully eradicated, the remaining part will be PTP marketing that has existed for a long time. This is a problem that has existed in society even before the development of technology. This is the background.

Concerning the problem that the public is concerned about, I will make a suggestion, that is, to require in the legislation that the Office of the Telecommunications Authority (OFTA) shall compile a Not-to-Call list, that is, a list of phone numbers that do not accept such calls. Members of the public can request that their phone numbers be included in the register, which marketing companies must check to see if the phone numbers of the relevant people are included. If this is the case, making phone calls to these people is prohibited. This measure will reduce instances of Mr WONG Ting-kwong being disturbed by phone calls in the middle of the night. Therefore, if one wants to reduce this kind of nuisance, in fact, a channel that they will be comfortable with, so to speak, is already provided in the legislation.

Well, please allow me to repeat that the amendments proposed by Mr WONG Ting-kwong today have fallen short of public expectation. The public expect a total ban but his amendments provide that calling line identification information shall be provided to them so that they can decide whether to answer a call or not, instead of prohibiting marketing companies from making calls to them. Therefore, if they receive a phone call and think that the number is not very familiar to them, they can decide whether to answer the call or not. This is true, however, in contrast with public expectation.....oh, I do not know if I have called that number before, so I will answer the phone and it is only after answering it that I find out that it is a marketing call, so I am subjected to such nuisance again. However, since I have answered the call, there is nothing I can do because the law does not prohibit marketing companies from making calls. Therefore, the expectation of the public will actually be raised but in reality, enforcement will be impossible because marketing companies have not violated the law.

Therefore, I believe that in future, if we want to target and regulate PTP messages, we have to take a holistic view instead of adopting a piecemeal approach. Let me say again that this is an industry involving the public, not an industry to which SIN Chung-kai belongs. They are not my constituents and the people they hire may not be labourers because not much manual work is involved, still, they are members of the Hong Kong public. They have the right

to work, so please do not say that I am protecting the interests of the industry because this is also relevant to the overall interest of the Hong Kong public.

Concerning law enforcement, we have to look at it in this way all the time. We said just now that in the information provided by the Government.....of course, we hope that the Government can provide adequate resources to the OFTA. According to the information provided by the authorities, there are only about 10 people. In fact, there are also only about 10 people in Australia. The population of Australia is three times that of Hong Kong, however, there are also only about 10 people to enforce this piece of legislation but they have received over 10 million reports against spamming.

After this piece of legislation excluding PTP messages is passed, we have to think about the eighty-twenty rule in management science. What causes the greatest nuisance? It is machine-to-people messages. After the passage of this piece of legislation, the Government or the OFTA has to enforce the law. We should deploy resources to the area that causes the greatest nuisance, so as to reduce the nuisance suffered by the public. Only in this way can we keep the reality in sight. We cannot just comment on whether or not a piece of legislation is fair in an abstract way but do not consider how the law can be enforced after passage, so as to achieve the greatest effectiveness, achieve the best results and reduce the greatest nuisance that the public is subjected to in an objective manner. I believe that it is necessary to consider this point holistically to see if such a measure is in the best interest of the public. It is also out of consideration for public interest that we consider what method should be adopted after the passage of the legislation to reduce the greatest nuisance caused to the public, so as to serve public interest.

In view of this, today, I cannot support the amendments proposed by Mr WONG Ting-kwong.

**CHAIRMAN** (in Cantonese): Does any other Member.....

(Mr WONG Ting-kwong raised his hand)

**CHAIRMAN** (in Cantonese): Mr WONG Ting-kwong, do you want to speak again? You can speak again later, however, you can.....

**MR WONG TING-KWONG** (in Cantonese): It is fine if I can speak later.

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

**MR ALBERT CHENG** (in Cantonese): Chairman, the amendments proposed by Mr WONG Ting-kwong today are in line with public interest, so why do I not support them? Apart from the lobbying by the Government, which is not the main reason, the main reason is that Mr WONG Ting-kwong's amendments are flawed.

As Mr CHAN Kam-lam said, in overseas countries, PTP marketing is regulated because the phone numbers of such calls begin with certain digits, for example, with quadruple five or quadruple seven, so when I see that it is a marketing call, I can choose not to answer it. However, if all that is done is just to display the number of the incoming call, I will not be able to remember whose phone number it is unless there is such a record in the memory of my mobile phone. For example, if I have Mr Ronny TONG's phone number, when I see that it is Mr Ronny TONG who is calling, I will answer the call. However, I do not have the phone numbers of many other people. Although these people have never called me before, still, I will answer their calls because I cannot be sure if they are marketing calls.

I think that Mr WONG's amendments are flawed. In view of this, we had better pass the government Bill to protect us from receiving unwanted messages. After that, when all of us are accustomed to being subjected to less nuisance and if some people still cause nuisance to other people and arouse public wrath, the rights of consumers can be better protected if amendments are proposed at that time.

In response to Mr SIN Chung-kai's remark that job opportunities had to be protected, Mr WONG said that those people were in fact working on the Mainland. I do not quite agree with this. I think we are now under "one country, two systems" and we often talk about Hong Kong's reunification with China and national education, so what is wrong with creating job opportunities in China? Mr SIN Chung-kai said that he was not protecting the interests of the industry but job opportunities. I believe that since we are following the "big market, small government" principle, the job opportunities of any industry

should not be protected by any particular legislation, so I do not agree with this. Why? If it is said that over 30 000 types of jobs are involved, so it is necessary to let these industries do their marketing, this being so, if this channel is no longer available and since they have to do business, they will surely look for other marketing channels and the lost job opportunities will surely be recreated. Therefore, I do not agree with this view.

This being so, I will support the Second Reading of this Bill today, however, I think the attitude that we should take is that after the passage of the Bill, if we think that PTP marketing still causes nuisance, the Government should carry out a review, as the Government promised when lobbying us. After the review, if problems are found, the legislation will be amended. I hope that in that way, a well-conceived piece of legislation that can fully protect our right will come into being. Thank you, Chairman.

**MR SIN CHUNG-KAI** (in Cantonese): Chairman, is it his turn to speak? Is it his turn to speak?

**CHAIRMAN** (in Cantonese): Since I have called on you to speak, so you should.

**MR SIN CHUNG-KAI** (in Cantonese): Chairman, as I said when speaking for the first time, and in response to Mr Albert CHENG's comments, I wish to say that in the United States, marketing is regulated but not by means of legislation such as the CAN-SPAM Act, rather, telemarketing as a whole is regulated. Therefore, if we want to do something, in fact, we have to formulate a piece of legislation that regulates marketing, so I agree with his comments.

The regulation proposed by Mr WONG Ting-kwong cannot be achieved merely by inserting some provisions into this piece of legislation, even though I agree with the requirement to display caller identity, because in future, if we want to regulate marketing, it will really be necessary to pass this Bill first and, as Mr Albert CHENG said, if there is still a large number of PTP telemarketing calls, say, five calls in one day, it would then be necessary for us to regulate this. When we regulate this, as Mr Albert CHENG said, it may be necessary to examine this matter holistically, to examine this matter in its totality, including

the establishment of a category, for example, to designate phone numbers beginning with the digit four or five as marketing calls, so on, so forth. This has to be dealt with as a whole package. These companies have to obtain licenses, be subject to regulation, and so on. At present, it is not necessary to obtain a licence to operate a call centre, that is, only a business licence is required and there is no need to obtain any specific regulatory licence. Therefore, here lies the justification and these moves are in line with public interest.

**MR LAU KONG-WAH** (in Cantonese): I wish to respond to one point raised by Mr Albert CHENG. Of course, I also fully agree that Mr Albert CHENG has borne in mind public interest and this is a view that we share.

However, he thinks that this Bill or amendment is flawed. I wish to tell Mr CHENG that there is no legislation that can be called perfect. We will never say that a certain Bill is perfect and totally in order. This will never be the case and additions and deletions are invariably made to it bit by bit. There is no problem with doing so. The important question is whether this amendment is enforceable or technically feasible. The most important thing is that the amendment is feasible and applicable technically and capable of safeguarding public interest. I believe Mr Albert CHENG should support the amendments on this basis.

In addition, Mr Albert CHENG also used his personal experience as an argument, saying that no matter if the phone number of an incoming call appeared to be familiar or not, he would answer the call all the same. This is his personal experience, but it may not be other people's experience. Why do we not protect other people with different habits from such nuisance?

The third point has to do with the employment issue, the need to provide employment opportunities, either locally or in other places. Mr WONG Ting-kiung did not deny this point. However, if they are founded on causing the public nuisance, we, as Members of the Legislative Council, have to consider thoroughly whether such nuisance can be reduced to a minimum. This is both my and your responsibility.

Therefore, I hope that Mr CHENG can think twice instead of making amendments only when public wrath mounts.



**MR ALBERT CHENG** (in Cantonese): Chairman, I thank Mr LAU Kong-wah very much for agreeing with my comments in the final part of his speech, that is, there is no need to protect those job opportunities. It is not right to create these job opportunities by causing the public nuisance or by invoking the principle of free market. I thank him for agreeing with this point.

As regards his remark that I should think twice, I think we should think twice every time we cast our votes. In fact, before we came here to attend a meeting, we have all considered matters thoroughly, therefore, each time when this Council votes on shortening the ringing time of the bell from three minutes to one, I always oppose it. Let me take this opportunity to say that I believe every Member should at least be given three minutes to consider how they should vote, so each time when it is proposed that the time be shortened, I always oppose doing so.

However, coming back to the question, Chairman, although there are some imperfections in this piece of legislation, should we pass it first of all? Members' views on this differ and people's habits also vary. I believe Mr LAU Kong-wah will not say that among the users of 9 million mobile phones in Hong Kong, I am the only one who answers every call. I am sure he does not have the figures showing how many people look at the caller display before they decide whether or not to answer a call and how many people just answer all calls. There are no supporting figures, so this is unscientific.

Second, I believe that if a flawed piece of legislation is passed today, this will give the Government an excuse not to improve it anymore, and it can drag its feet further. I have said that if this Bill is passed, we would not be subjected to any electronic marketing and will only encounter PTP marketing. If only electronic marketing is prohibited, people engaged in electronic marketing can easily switch to PTP marketing and naturally, there will again be greater nuisance. In that event, we will again urge the Government, or the public will again urge us and the Government to make a better law. My views and those of Mr SIN Chung-kai in this regard share some common grounds.

Therefore, after thinking twice, I have still decided to vote against Mr WONG Ting-kwong's amendments and support the Second Reading of the Bill. Thank you, Chairman.

**MR WONG TING-KWONG** (in Cantonese): Chairman, in fact, many Members have spoken in today's debate. Among them, I envy Emily — Ms Emily LAU — because the amendment proposed by her was taken on board by the Government in the course of the Bill's scrutiny by the Bills Committee. I think that being Members of the Legislative Council, if we propose amendments in public interest, no matter if we do so in our personal capacity or if the amendments are adopted and moved by the Government, as long as the aim is achieved, we should still feel gratified.

Emily said that the Government was very hegemonist. In fact, it is only being heavy-handed rather than hegemonist. I think she should find this a cause for celebration.

Mr SIN Chung-kai commented that my amendments are neither fish nor fowl. In fact, it is always difficult to take the first step. I quote two lines from a poem by MAO Zedong, "Idle boast the strong pass is a wall of iron/With firm strides we are crossing its summit.". After taking the first step in this long march, it is really difficult to achieve our target in one stride if the door is closed and access denied. I also hope that we can achieve our target in one stride. I wonder if this is like what our Chief Executive, Mr Donald TSANG said, that if we wanted to achieve our target in one stride, this would only be possible in Heaven. Therefore, we need to make achievement bit by bit in every endeavour. I hope that Mr Albert CHENG can think again and again.

Also, I hope that Mr SIN Chung-kai can tell us in detail the actual situation of this industry. I really have no idea how the employment situation in the telecommunications industry in Hong Kong is like. During the scrutiny of the Bill by the Bills Committee, I requested the Hong Kong Call Centre Association and Hong Kong Direct Marketing Association to show me around. It is not necessary for them to invite me to officiate at their inauguration. I only want them to show me around so that I can have a better understanding — however, at present, there is no actual supporting figures. It is said that there are 33 000 employees in the industry and the annual revenue is more than \$7 billion. These figures seem to be arbitrary, so I really do not find them credible. I hope that I can be invited to visit these companies so that my misgivings can be dispelled. Alternatively, I hope that someone can give us a detailed presentation on these companies to let us know things like the locations of these companies.

Last time, when scrutinizing the anti-smoking legislation, Mr Tommy CHEUNG also took us to many mahjong parlours, karaoke establishments, restaurants and bars to make site visits. This time around, I also hoped that I could make site visits but my wish was not fulfilled. Concerning these trades, Mr SIN Chung-kai asked what I would do if someone sent me a letter. If someone send me a letter, I can choose not to open it and I will not suffer any loss at all. However, if it is a call, as soon as I answer it, money will be taken from me as I have to pay the charge once I answer the call. Their business is founded on my paying the charge, so is that justifiable? There is no reason that I would support them when their happiness is founded on my suffering. You are out to make money, but I have to pay. That is not reasonable. Therefore, I think that this example is a different matter altogether. This is different from someone giving me a pamphlet in the street. When someone hands me a pamphlet, I have the right to choose whether or not to take a look. My money will not be taken from my wallet upon receiving a pamphlet. However, regarding this kind of telemarketing calls or cold calls, once I press the button on my phone, even when I am in Hong Kong, I still have to pay the charge for local calls. If I am abroad, I even have to pay IDD charges. Therefore, it is really necessary to think about these issues. When running a business of this kind, one has to give others the right to choose whether to accept these cold calls or not. This is the principle according to which I have proposed these amendments.

Mr Albert CHENG talked about arousing public wrath. This is not desirable as our society now attaches importance to harmony and nipping the devil in the bud, which is better than arousing public wrath. Take the Queen's Pier as an example, this matter would not have come to such a sorry state if it had been dealt with properly at an early stage, would it?

As Members, we do not want to see any public wrath. It would be better if we can nip the devil in the bud, would it not, "Tai Pan"? Therefore, I hope that Members present today can consider my amendments seriously. They are made out of consideration for the interests of the Hong Kong public and for our interests. Thank you, Chairman.

**MS EMILY LAU** (in Cantonese): Chairman, I have said in my speech on the resumption of Second Reading just now that I could not support the amendments proposed by Mr WONG Ting-kwong. Mr WONG said just now that he envied

me very much. President, it is true that I have rarely seen such days because usually, I would be attacked by other Members and it is rare that other people would envy me so much. Furthermore, I now have the chance to side with the Secretary, so it can be said that in this world, anything can happen. Chairman, it also shows that I do not voice opposition for the sake of doing so.

I also wish to talk about why I do not support the amendments. In the first meeting, the Administration explained that PTP telemarketing calls required substantial manpower resources and time from the telemarketers. The extent to which they could cause nuisance to recipients, and lead to abuse of the telecommunications networks was much more limited than voice or video messages with pre-recorded or synthesized elements, therefore, it believed that it should leave room for telemarketers to develop. I accepted this point right from day one. Chairman, I am also convinced that I am protecting public interest because I am not a member of the industry. Since I hope very much that there can be room for development in the market, I agree with the differentiation made by the Administration on which area requires regulation and which does not.

Mr WONG said just now that some members of the industry claimed this move would lead to many job losses. This is what he told us in the Bills Committee. Mr WONG said that in fact, he could not locate these people. Actually, we should take him to a visit. Mr WONG also said that perhaps these people could not be found in Hong Kong but were in other places. I think that I will be concerned if there is a loss of job opportunities in any place due to certain measures, particularly in view of various developments such as globalization nowadays. Sometimes, when I found that in some car parks, the method of paying car parking fees had been changed to the Octopus card system, what struck me immediately was not that people could enjoy greater convenience but that again, some people would lose their jobs. Chairman, you can also see that such is the case in an increasing number of car parks, so should we support this? I myself do not approve of this.

Therefore, I believe that no matter if it is in Hong Kong or in other places that job opportunities are lost, we still have to give this situation some thought and cannot pursue technological developments indiscriminately. Of course, there are in fact a lot of things that can replace manual power, however, what are the workers supposed to do? Even if they are eligible for Comprehensive Social Security Assistance (CSSA), still, they will feel very unhappy. Besides, do we want so many people to receive CSSA?

Some Honourable colleagues also mentioned that in fact, we have to strike a balance between the nuisance caused to the public and the loss of certain job openings. Chairman, I have also fallen victim to such nuisance before. One day, at nine o'clock in the evening, the phone at my home rang and the caller said that he was calling on behalf of a certain bank. That was not an electronic message but PTP telemarketing. He asked me if I wanted to borrow money and of course, I replied in the negative. He then said "thank you" and hung up. However, ever since I hung up, I have mentioned this incident to other people a number of times. What I want to convey is not that I was subjected to some nuisance, but that I wonder if something is not quite right. Some banks were still in operation at nine o'clock in the evening — they are the constituents of Dr David LI, so he probably knows about this — and some people were still making calls everywhere to ask people if they wanted to borrow money. I believe that person was definitely not working from home. Was it possible that the bank would allow him to take home all the information on all customers, such as that of Emily LAU, to make calls from home? Certainly, he was calling from the bank. That is why I wonder if something is not quite right. It is such a large bank — Chairman, the bank is a very large one, almost as large as Dr David LI's — and it is still in operation at nine o'clock in the evening. What I wish to point out in recounting this incident is not that that person caused me any nuisance, but that the banking sector is quite heartless because its employees have to make phone calls to customers even at nine o'clock in the evening. They still have to go to work at nine o'clock in the morning the next day, do they not? Is it possible that they can go to work at two o'clock in the afternoon? This is what I have been thinking.

Therefore, the question is how we can strike a balance. If someone's call is a nuisance, we can simply hang up. Of course, Mr WONG was once quite mad because he received this kind of call when he was on the Mainland, however, I do not think it is for this reason that he proposed the amendments. Hence, I very much agree with Honourable colleagues' view that it was necessary to strike a balance between nuisance and employment, be it in Hong Kong or overseas. This being so, we have to consider this issue and I believe not just Members representing the labour sector but all Members should care about the issue of employment in society. For this reason, I hope Mr WONG Ting-kwong will understand why we cannot support him today, that is, because we really feel concerned about the loss of employment opportunities, be it locally or in other places.

In addition, Mr WONG also pointed out just now that it would also be difficult to deal with some issues. For example, concerning certain business relationships such as making reservations for a package tour by someone's wife, I believe it is possible to verify them. However, at this stage, to what area do we want the authorities to commit the resources? I said just now that in future, after the authorities have promulgated the law, given that there are now 10 million phone numbers and fax numbers in Hong Kong, it would be necessary for them to handle 120 000 phone numbers daily. Chairman, I am already feeling concerned as to whether or not the authorities can handle all of them, and yet, the Secretary did not give me any reply just now. It is likely that the authorities cannot even handle that number of calls, not to mention handling other calls together.

Chairman, I have become someone of the royalist camp for no apparent reason. However, this does not matter because I have my own beliefs in this matter, so I want to voice my views. I so submit.

**MR HOWARD YOUNG** (in Cantonese): Chairman, I have pointed out in my speech during the Second Reading debate that the Liberal Party takes an open attitude towards the proposal raised by Mr WONG Ting-kwong to regulate PTP telemarketing. I have also stated that I have to take note of what undertaking the Secretary will make.

To start with, Mr WONG's amendments are justified and good to consumers. Furthermore, they are meant to be a form of protection to people who have received a wide array of telemarketing calls. I also understand what he means; and his starting point is very good.

At the same time, I have also received some letters from associations of marketing firms, and some of them were even addressed to our Party Chairman, with one stating that tens of thousands of people might lose their jobs as a result. I have read that letter, and discussions have been held among us too. Though I dare not say that the letter has deliberately exaggerated in saying that tens of thousands of people will lose their jobs, I think the figure is on the high side and the actual figure might be lower. However, some people will definitely be affected.

In an example she cited earlier, Ms Emily LAU mentioned that she had received a telephone call from a bank about loans at 9 pm. My wife and I have

also had an experience of receiving a telephone call on Sunday asking whether we would like to replace our mobile phones or sell our properties. I was very furious at first. Later I told myself to forget about it, for some people had to work so hard even on Sunday evening. Probably many people regard this as their career, right? It is therefore very difficult to strike a balance. My consideration is, on the contrary, not unemployment. Instead, it is about the Australian experience mentioned by Mr SIN Chung-kai in the debate earlier (we have never heard about it in the Bills Committee) in which tens of millions of complaints were involved. We in the Bills Committee have enquired the Government about the number of people engaging in work in this area. I think machines are the main culprit, and it is most important for us to deal with them because they have constituted a very serious problem. Of course, it is good, ideal and perfect if PTP nuisance can be minimized.

We have noted the Secretary's earlier remark that the situation will be closely monitored and he has undertaken to do so. Furthermore, it has been put beyond doubt that, if requests are received from the public for tackling this issue after the implementation of the scheme and solving of other major problems, the Government will not rule out the possibility of perfecting this legislation in future. To me, this is acceptable.

Ms Emily LAU has just now also mentioned the first meeting. I also remember the meeting because I was the Chairman then. I remember the Government stated when tabling this legislation in the first meeting that the legislation sought to target machine-to-machine, not PTP, issues. There are two essential points. First, as the Chairman, I clearly remember I raised a very clear question about the relevant principle because this was often the first thing to raise when legislation was discussed. I had raised a very clear question as to whether Members accepted the PTP principle or not and had this put down on record. I believe we can confirm this by referring to the record.

I also remember that Mr Jasper TSANG might not be present at that time as the meeting was held on Tuesday when the Executive Council should be holding its meeting too. Therefore, not all Members were present at the meeting. However, when the meeting was about to end, I made it a point to ask whether Members agreed that the framework was not targeted at PTP and whether this point was acceptable to Members. The principle was agreed by all Members present, including me, at that time. However, I dare not assert that everyone was present. Nevertheless, this should have been recorded.

I certainly do not want to see something like the tobacco control legislation. Tobacco control was initially sought to be confined to indoor places. The scope of the legislation later turned out to cover outdoor places, and even beaches, as well. Despite our long-standing objection to expanding the scope of the legislation in this manner, it had been done and there was nothing we could do. Given that the Government is not indifferent to this legislation and does not seek merely to push for its passage and has instead undertaken that improvements can be made in the future in a progressive and orderly manner, we find this acceptable. Therefore, the Liberal Party will first support the Government's amendments. Perhaps we might not develop to such a stage that we have to oppose Mr WONG Ting-kwong's amendments, but we will still support the Government's amendments first because they have heeded the views of a lot of Members.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, perhaps there is simply no need for us to pay attention to such an act of marketing commodities to potential clients. Such an indiscriminate act is definitely unscrupulous because it will cause nuisance to everyone. In my opinion, control is warranted. However, what sort of information should be treated as commercial or otherwise? It is extremely difficult to define. For instance, will it be considered a commercial act if I appeal to others to take part in a 4 June rally by sending them an electronic message? I will do something like this. I will appeal to others to participate in a 4 June rally. I will tell them that the massacre was wrong. I will do so, but it is most worrying that.....

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, the amendments being debated at the moment are about PTP unsolicited electronic messages rather than machines. Please speak to the question.

**MR LEUNG KWOK-HUNG** (in Cantonese): Right, I am precisely talking about this.

**CHAIRMAN** (in Cantonese): You have still not come to the subject matter even though you have spoken for a long time. This is why I have to remind you.



**MR LEUNG KWOK-HUNG** (in Cantonese): Fine, thank you. The logic of my speech is quite difficult to understand because we have different levels of understanding. Insofar as this issue is concerned, if messages between people are subject to control, this would mean even a telephone call from me to my friends on 4 June reminding them to participate in processions and rallies would probably be prohibited as well.

PTP marketing is inherently identical to machine-to-person marketing because the information involved is unsolicited all the same. Therefore, I find it unjustifiable to support any attempt to prohibit or regulate the provision of information by machines. In other words, the Government has no intention to regulate PTP marketing. Mr WONG Ting-kwong's proposal seeks not to disallow PTP marketing. Only that someone must be held responsible, and the telephone numbers of callers must be revealed.

Of course, many may argue that a mechanism can be put in place to protect recipients by barring all telephone calls not revealing the telephone numbers of the callers. However, such an approach is logically wrong because, according to the legislative intent, it makes no sense to ask someone to do something unnecessary to protect their own freedom. Neither can the Government convince us that there is a difference between telemarketing by machines and by persons, as both will similarly lead to exploitation. This is a principle of capitalism. I hope Members can refrain from saying that we object to all acts performed by robots, and we will not object if the same acts are performed manually. Therefore, I find the argument put forward by Mr WONG Ting-kwong justified.

I have no idea of the Government's logic, for according to its logic, employment will be affected as a result. Ms Emily LAU has already cited some examples. I felt terribly sad on seeing something like that. For instance, my niece had to go to work even on Sunday. Instead of relying on machines, she stood at the entrance of her bank to engage in credit card marketing for her bank. Even if she met someone who had already got a credit card, she would still persuade him that one credit card was not enough and that her bank would offer more concessions. She would then go on persuading him to apply for an additional credit card. Now, things are better for her since the economic conditions have changed for the better. She no longer needs to engage in credit card marketing frequently.

Hence, I do not think it would be unacceptable for a robot to engage in credit card marketing but acceptable for a person to do the same. Insofar as this point is concerned, I disagree that the Government should object to imposing control on people making so-called cold calls on the ground that employment will thus be affected. With regard to such control, I have to reiterate that it is not that I am against this way of marketing. Only that someone has to be responsible. Actually, I received similar telemarketing calls a couple of days ago telling me the concessions offered by a certain credit card for patronizing a certain hotel. I merely found this most annoying. Hence, I hope the Government can consider this element in relation to this point. Furthermore, such activities may give rise to another problem — some people have frequently approached me for lending them money and some people would dial the wrong number and demand me to repay them money. Should these be considered commercial in nature? If cold calls are permitted, how should we treat those calls demanding me to repay money? They can be described as commercial activities and hence are not subject to control.

This is why I think that the issue has to be handled in an impartial manner. What is wrong with a promotor revealing to a recipient his identity when the latter is asked to accept what he does not want? Even if I wish to initiate litigation, pursue the case or report the case to the police, I could still have a handle. Now that the Government has decided to act in this way, I will be denied such handle. Therefore, I think that it is extremely hypocritical of the Government to handle this matter on the pretext that loss of employment opportunities will be resulted. In fact, in such issues as outsourcing, privatization, permitting subcontracting and multiple subcontracting, the prolonged delay since the scrapping of the Municipal Councils of projects formerly undertaken by the Councils, conniving at employers sacking their employees and its failure to establish minimum wages the Government has not associated these problems with employment opportunities. Therefore, the Government actually knows it all too well that it is not going to do anything that will slightly upset the 800 people (those participating in the small-circle election). It is just as simple as that.

Today, pressure will be exerted by slightly influential people or the four major consortia operating cold call companies. No, buddy, do not mention all these — control will not be imposed because of the Government's fear that some

people might lose their jobs. Its only fear is that the rich and powerful might pressurize the Government. Neither is there a need for the Government to justify itself; it merely picks a reason. Is the Government really worried about unemployment? Is the Government talking? Members must not be cheated by the Government. It must be understood that, for the sake of coping with the pressure exerted by the rich and powerful, the Government will behave in this manner and do something that it cannot even explain. Thank you, Chairman.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): If no Member indicates a wish to speak, Mr WONG Ting-kwong, do you have to speak again?

(Mr WONG Ting-kwong shook his head to indicate he would not speak again)

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Chairman, I will speak very briefly. To begin with, I would like to thank Honourable Members for their speeches. I am very pleased because their speeches are basically rational. Both parties have set out their arguments in great detail. I merely wish to add several points as follows:

First, I have certainly been subject to nuisances, though the number of machine-generated messages is far greater than that of PTP marketing messages. This is point number one. Furthermore, it is not the case that immediate action is warranted just because I or even the Chief Executive has been subject to nuisances. It is most important to find out if this is good for the industry and the public.

The second point concerns the impact on employment and the industry. We have actually received the representations from two associations only. However, we have so far not heard anything from other associations or unions expressing support that there has been absolutely no or even greater impact on them. This is not the case.

Third, as I have stated earlier, I have all along considered that Mr WONG's amendments are well-intentioned, and his proposed amendments will be considered in the future. However, the amended provisions at present will indeed make law enforcement difficult. The point I raised earlier was about complaints about caller number display. Unless a specific mechanism is put in place to record the telephone calls of all people — this will surely be greatly controversial — otherwise, it is impossible for the complaints to be dealt with.

In another well-intentioned example, Mr WONG proposes in his amendment that messages pursuant to "a previous or current business or client relationship" be exempted. Our legal advisor is of the view that this is unclear. What does "previous" mean? How many years? Is "client relationship" given a new definition? For these reasons, I very much hope that Members can share and listen carefully to my undertaking that this matter will be closely monitored. We do not rule out the possibility of perfecting the existing legislation if problems really arise.

It is most important that — as Mr SIN Chung-kai and Mr Howard YOUNG have reminded us — after the passage of the Bill, the Office of the Telecommunications Authority might require more manpower to enable us to take immediate action to deal with a possible flood of machine-generated junk mail. Therefore, we have to accomplish this task first. Then, we will be prepared to move on to another issue. We fully understand and accept that public opinion is the core of our policies. In consulting the public, we must tell them clearly the subject of consultation. It is vitally important to do so. I think 100%, or at least 99%, of the people will express support if they are asked whether or not they agree that PTP telemarketing calls be regulated. However, they must be told in unequivocal terms at the implementation stage what will be covered and regulated. It might not turn out to be 100% perfect. Perhaps we have to dial up our intensity in law enforcement too. We hope to have ample time to consider all this in the future.

Lastly, I wish to remind Honourable Members that these amendments are moved by the Government. Therefore, Members supporting the Government please press the button indicating "support" because a lot of dissenting views were expressed during the debate earlier. Therefore, I would like to call on Members clearly supporting the Government to press the button indicating "support". Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Before I put to you the question on the Secretary for Commerce, Industry and Technology's amendments to clause 6 and schedule 1, I wish to make it clear that if these amendments are agreed, Mr WONG Ting-kwong may not move his amendments to clause 6 and schedule 1 because this is inconsistent with the decision already taken. However, if the Secretary's amendments are negatived, I shall call upon Mr WONG Ting-kwong to move his amendments.

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

(Members raised their hands)

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

(Members raised their hands)

Mr WONG Ting-kwong rose to claim a division.

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

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

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

Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Chin-shek, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily

LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Mr CHIM Pui-chung and Mr Albert CHENG voted for the amendments.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr WONG Yung-kan, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Ms Audrey EU, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr KWONG Chi-kin and Miss TAM Heung-man voted against the amendments.

Prof Patrick LAU abstained.

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

THE CHAIRMAN announced that there were 44 Members present, 26 were in favour of the amendments, 16 against them and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

**CHAIRMAN** (in Cantonese): As the amendments moved by the Secretary for Commerce, Industry and Technology have been passed, Mr WONG Ting-kwong may not move his amendments to clause 6 and schedule 1, which is inconsistent with the decision already taken.

**CLERK** (in Cantonese): Clause 6 and Schedule 1 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 6 and schedule 1 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1, 2, 5, 7, 8, 10, 14 to 18, 21, 23 to 34, 37 to 40, 42, 43, 45, 46, 51, 52 and 54.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Chairman, I move the deletion of clause 32 and amendments to the other clauses read out just now, as printed on the paper circularized to Members.

The above amendments are mostly minor technical changes or changes to wordings or drafting for the purpose of further perfecting the Bill. Nevertheless, I hope to point out in particular the following amendment proposals.

We have accepted the suggestion of the Bills Committee, so clause 8 is amended to require that the years of retention by a sender of commercial electronic messages of a record of the unsubscribe requests are shortened from seven to three.

Clause 31 proposes to clearly define that the Telecommunications Authority (TA) may determine the procedures, conditions and the manner governing access to a do-not-call register and impose a charge for accessing the register. It has been spelt out clearly in the amendments that the registered user of an electronic address is empowered to verify, free of charge, whether that electronic address is listed on a do-not-call register.

We have accepted the suggestion of the telecommunications industry, so clause 33 is amended to spell out the objectives in relation to which the TA may issue directions to a telecommunications service provider and clarify that where a matter is one where the TA can exercise his powers under other clauses of the Bill, the TA will not exercise his powers in clause 33 for such a matter. At the Bills Committee's suggestion, a provision has been added to stipulate the penalty for non-compliance with the directions issued by the TA under clause 33.

On the suggestion of the Bills Committee, clause 34 states clearly that, in the event that the TA seeks an order from a Magistrate to require someone to produce a document, the affected person would be given an opportunity to attend the relevant proceedings.

On the suggestion of the Bills Committee, clause 38 requires that, where an authorized officer enters and searches any premises under a warrant issued by a Magistrate, he shall, on request, produce the warrant and evidence of his identity for inspection by relevant persons.

On the suggestion of the Bills Committee, clause 45 states the arrangement made in the event of any conflict of interest arising between the Chairman, Deputy Chairman and members of the Appeal Board when the enforcement notice of an appeal case is reviewed by the Appeal Board.

On the suggestion of the Bills Committee, clause 54 requires that the CSAs proposed to liability of directors, partners, and so on, would be consistent with the CSAs proposed to similar provisions in the Copyright (Amendment) Bill 2006.

The Bills Committee has discussed and expressed support for the above amendments. I hope Members will endorse them. Thank you.

*Proposed amendments*

**Clause 1 (see Annex I)**

**Clause 2 (see Annex I)**

**Clause 5 (see Annex I)**

**Clause 7 (see Annex I)**

**Clause 8 (see Annex I)**

**Clause 10 (see Annex I)**

**Clause 14 (see Annex I)**

**Clause 15 (see Annex I)**



**Clause 16 (see Annex I)**

**Clause 17 (see Annex I)**

**Clause 18 (see Annex I)**

**Clause 21 (see Annex I)**

**Clause 23 (see Annex I)**

**Clause 24 (see Annex I)**

**Clause 25 (see Annex I)**

**Clause 26 (see Annex I)**

**Clause 27 (see Annex I)**

**Clause 28 (see Annex I)**

**Clause 29 (see Annex I)**

**Clause 30 (see Annex I)**

**Clause 31 (see Annex I)**

**Clause 32 (see Annex I)**

**Clause 33 (see Annex I)**

**Clause 34 (see Annex I)**

**Clause 37 (see Annex I)**

**Clause 38 (see Annex I)**

**Clause 39 (see Annex I)**

**Clause 40 (see Annex I)**

**Clause 42 (see Annex I)**

**Clause 43** (see Annex I)

**Clause 45** (see Annex I)

**Clause 46** (see Annex I)

**Clause 51** (see Annex I)

**Clause 52** (see Annex I)

**Clause 54** (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendment to clause 32, which deals with deletion, has been passed, clause 32 is deleted from the Bill.

**CLERK** (in Cantonese): Clauses 1, 2, 5, 7, 8, 10, 14 to 18, 21, 23 to 31, 33, 34, 37 to 40, 42, 43, 45, 46, 51, 52 and 54 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

<b>CLERK</b> (in Cantonese):	New clause 5A	Application
	New clause 30A	Powers of Authority in relation to do-not-call registers
	New clause 34A	Disclosure of information and documents given or produced under section 34
	New clause 40A	Service of notices for purposes of sections 33, 33A, 34 and 35
	New clause 52A	Offences relating to misuse of information.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Chairman, I move that the new clauses read out just now be read the Second time, as printed on the paper circularized to Members.

Clause 5A will make the Bill binding on the Government. However, neither the Government nor any public officer in the officer's capacity as such is liable to be prosecuted for any offence under this Bill. I have mentioned the background to and justifications for this amendment during the Second Reading debate earlier.

Clause 30A spells out in detail the powers of the Telecommunications Authority (TA) to deal with do-not-call registers. We consider that the addition of this provision can help elaborate more clearly how the TA may exercise his powers.

Clause 34A restructures the original clauses 34(5) and 34(6), relating to the TA's responsibility to deal with any information or document given or produced to him under section 34, into a new provision. The provision represents merely a drafting change.

Clause 40A is added in response to the Bills Committee's suggestion. This provision states clearly the issuance of a direction to a telecommunications service provider under section 33, the imposition of penalties on a telecommunications service provider under section 33A, the request for someone to provide information or a document relevant to investigation under section 34, and the manner of delivery of an enforcement notice under section 35 and related matters.

Clause 52A represents merely a drafting change by allowing the original section 32 relating to "offences relating to misuse of information" to stand part of Part 7 of the Bill as section 52A.

The Bills Committee has discussed and expressed support for the above proposed new provisions. I implore Members to support and endorse these provisions.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be read the Second time.

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

**MS EMILY LAU** (in Cantonese): I speak in support of the amendments introduced by the Secretary. However, I do not find clause 5A entirely

convincing. In particular, Chairman, during the resumption of the Second Reading debate, I described the Secretary as hegemonist. However, Mr WONG Ting-kiung argued that it was heavy-handed. I wonder what his point was. Nonetheless, I am most upset.

I share that this legislation should be applicable to the Administration. The wording used by the Secretary now is exactly the same as the wording used by me in my amendment the other day. Chairman, I would like to point out that I have actually discussed this with our Legal Adviser. We have examined various aspects and found that several ordinances are applicable to the Administration. As regards the wording, Chairman, the provisions read: "This Ordinance binds the Government" and "Neither the Government nor any public officer in the officer's capacity as such is liable to be prosecuted for an offence against this Ordinance". The provisions are indeed drafted with the slightest impact. In other words, although the Ordinance is applicable to them, there is no way to sue them because they are not criminally liable.

In some other cases, the circumstances are even more complex. We have spent a lot of time examining the legislation concerning excavation. At that time, we considered it necessary to put the provision in black and white. As Members are aware, we can see when we go out to the streets that a number of roads have been excavated but no one take any notice of them. Sometimes, the Government should be held responsible. When the provisions were drafted, no criminal liability was imposed on the Government. Instead, a lengthy procedure was laid down. For instance, government officials will be responsible for inspecting the situation and, in the end, compile a report for submission to the Secretary, and so on. I considered back then that as the proposal was supported only by the Civic Party and the Democratic Party, but not the Liberal Party and the DAB, how could I expect them to convene 20 meetings or so with me to discuss the relevant procedure and put it on record if I put forward such a complex proposal? I therefore put forth a proposal with the slightest impact. Chairman, similar legislation in Australia is actually written in that way too.

Even though the Secretary has now taken on board my suggestion, I hope he can refrain from frequently invoking Article 74 of the Basic Law, saying that Members should not introduce amendments that might succeed. Although this has been discussed in the Bills Committee, I hope the Secretary can repeat once again that civil servants are governed by their own procedure, and it is not the

case that they will be alright or have no responsibilities. They have their own procedure. If public officers are really found to have issued messages indiscriminately, the relevant procedure will have to be activated for investigation to be conducted. Should public officers really act in that manner, they will be subject to disciplinary action. Therefore, the Secretary..... I wonder if he wishes to shirk his responsibility. We have made it clear in the report that the Secretary must state explicitly that it is not the case that public officers will not be held accountable. Therefore, I support this point. However, I still have to make it clear that it is definitely not the case that public officers are not liable and that it makes no difference whether this is written down or not.

Furthermore, I stated during the Second Reading debate earlier that the Secretary had expressed his wish to set a good example. Students are now looking up to him as an example not only in relation to this legislation, but also in the sense that the Government will abide by the laws. I therefore hope that the Secretary can relate this message to the Government's senior echelon to let them know what happens today. As regards future legislation, Members should no longer need to introduce amendments. Instead, the Administration will put it in writing in the legislation that the legislation will bind the Government. However, will it be written in such a simplistic manner as it is written in the Bill today? I believe we will have to spend considerable time discussing this because the spectrum will be very wide however the legislation is written down.

Chairman, here I have to remind Honourable colleagues that this issue was not deliberately raised until now. In the Panel on Administration of Justice and Legal Services of the Legislative Council, we had indeed spent considerable time studying this question and submitted a report to the House Committee on 7 July last year. The report reads, "in the context of regulatory offences, the issue of whether there should be Crown immunity from criminal liability is essentially a matter of policy and not a matter of constitutional or legal principle." We have therefore proposed to the Panel — I am a member of the Panel, while Ms Margaret NG is the Chairman — "When legislative proposals are introduced into LegCo imposing obligations which are also binding on the Government, the issue of public officers' immunity from criminal liability if they are in breach of those obligations in discharging their public duties should be considered on a case-by-case basis". Perhaps some people here.....there are all sorts of people in our panels. At least, this issue is not considered a constitutional issue. It is shared by a number of Members that the Government has to be law-abiding.

Chairman, if you look up the Basic Law, you will find that it is explicitly stated therein that everyone is equal before the law. How can everyone be equal if it is said that the Government needs not be law-abiding by citing a large number of laws?

Therefore, the Government should be law-abiding, whether for the sake of compliance with the Basic Law or various principles. It is with great reluctance that I have rendered the Secretary my support because he has hijacked my amendment. However, I have to express regret that I object to the Government's tyrannous and hegemonist behaviour by frequently resorting to Article 74 of the Basic Law to influence Members' power of making laws.

Thank you, Chairman.

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

**MR SIN CHUNG-KAI** (in Cantonese): Actually, Ms Emily LAU ought not to be so excited because she should have known that "officials will still be permitted to burn down houses and the common people be forbidden to light lamps", even if this legislation is passed. The Government will still have an imperial sword — or I should say even if government officials make a mistake, they will still be exempted from prosecution because of the existence of the imperial sword. Precedents can be found if we refer to other ordinances. I have recently participated in the scrutiny of a Bill on the so-called toxic waste in a Bills Committee chaired by Ms Audrey EU to study ways to control such articles. Even if public officers do not act according to law, they will still be exempted from prosecution.

I would say that the above problem is more serious than this one because the latter is, relatively speaking, less serious. Franking speaking, the problem will not be too serious if civil servants are asked to do less (I do not mean to offend them). Now they are supposed to make an extra effort to send out spam to the public — the chances of their doing so should be very slim. This would only occur when they forget to remove people expressing a wish not to receive government messages from the list and so those messages and commercial activities are allowed.....the Government has omitted this. Under such circumstances, the Government can, or I should say may, initiate prosecution if

the service provider involved is a business organization. In other words, a warning may be issued as the first step. However, if the service provider is the Government, it can still get away with it.

Simply put, the Chinese character "official" has two mouths. Notwithstanding this, I still hope other government departments.....I believe a few government departments, such as the Leisure and Cultural Services Department, will issue e-mail appealing to the public to purchase books or participate in ticketing activities. As commercial acts might be involved, electronic messages might have to be issued.

Hence, I consider that the Government should act as a role model in taking the lead to ensure that the bureaucratic procedures adopted by those government departments are even more stringent to avoid the occurrence of scandals to give people an impression that the Government is taking the lead in sending spam to the public. Actually, I do not think the Government will send spam to the public because it will not engage in e-mail harvesting for no reason. The Government will not bother to do anything like that. I do not believe the Government will work so diligently. However, what mentioned by me earlier is still possible. What I mean is, despite the requests made by some people for the Government not to send any more messages to them, the Government has forgotten to remove their e-mail addresses or relevant addresses from the list and thus continued to send messages to them.

With these remarks, I hope the Government can be a bit more vigilant in dealing with this issue.

**CHAIRMAN** (in Cantonese): Mr Ronny TONG, you.....

**MR RONNY TONG** (in Cantonese): I think I have pressed the button. Yes, I have.

**CHAIRMAN** (in Cantonese): Do you wish to speak?

**MR RONNY TONG** (in Cantonese): I wish to speak.



**CHAIRMAN** (in Cantonese): You may speak now.

**MR RONNY TONG** (in Cantonese): I am waiting for you to call upon me to speak.

**CHAIRMAN** (in Cantonese): Since I think that only a few Members wish to speak, so I did not look at the monitor.

**MR RONNY TONG** (in Cantonese): OK, it does not matter. Chairman, I would like to briefly express some views on this matter. First of all, I wish to comfort Ms Emily LAU and ask her not to get on her nerves because in a society with a sound legal system, she should not and need not at all propose any amendment. The Government should be self-conscious enough to subject itself to the regulation of all laws.

Ms Emily LAU said that this is the minimal amendment, which means that no government officials will be imprisoned for violation of laws. I think this is fair enough. Chairman, why is this so? It is because most government actions are collective actions. Countries that rule by the rule of law may also consider it inappropriate to imprison any government officials for a certain collective action. On the contrary, however, should this Bill also apply to the Government, any contravention of it will subject the Government to legal liabilities, which is pretty heavy. The simplest example is that, in the course of a judicial review, all members of the public have the authority to have the Government regulated by law, that is, to apply for an injunction order to require the Government to act in accordance with the law. At the same time, Hong Kong people who have sustained damages can hold the Government liable for civil tort, and file claims for compensation or apply for an injunction order through legal means.

Chairman, the violation of law on the part of the Government is indeed a very serious matter, and it should therefore bear all legal and political consequences. We opine that it is certainly most desirable to have comprehensive provisions on liability, but even if there is not, an amendment like this still means a lot, particularly in enabling all Hong Kong people, and even people outside Hong Kong, to know that our Government does respect the rule of law. This is very important.

Here, I wish the Government could note that such an approach does not apply to this Bill alone, but any other bills, particularly the Racial Discrimination Bill to be deliberated in future. I hope that the Government will be subject to the regulation of law as it is today.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now invite the Secretary for Commerce, Industry and Technology to speak again.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Chairman, this is very simple. First, the issue of the Hong Kong SAR Government (including my colleagues) breaking the law is definitely out of the question. We will certainly abide by the law. Second, the Commerce, Industry and Technology Bureau will draw up guidelines to help Policy Bureaux and government departments remind their staff what activities are prohibited by the Bill and what measures should be adopted for compliance with the provisions of the Bill. Furthermore, the civil service system has very stringent management and disciplinary arrangements to handle staff members who have violated the relevant management guidelines. Thank you, Chairman.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clauses 5A, 30A, 34A, 40A and 52A.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Chairman, I move that the new clauses read out just now be added to the Bill.

*Proposed additions*

**New clause 5A (see Annex I)**

**New clause 30A (see Annex I)**

**New clause 34A (see Annex I)**

**New clause 40A (see Annex I)**

**New clause 52A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule 2.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Chairman, I move the amendments to schedule 2, as printed on the paper circularized to Members.

At the request of the Bills Committee, the amendment stipulates that the consequential amendment to section 24(2)(a) of the Telecommunications Ordinance is added to the Bill but not to any other law. Furthermore, a technical amendment is proposed.

I implore Members to support and endorse the amendment. Thank you.

*Proposed amendment*

**Schedule 2 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule 2 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That schedule 2 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **UNSOLICITED ELECTRONIC MESSAGES BILL**

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

Unsolicited Electronic Messages Bill

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Unsolicited Electronic Messages Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Unsolicited Electronic Messages Bill.

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Revenue (No. 2) Bill 2007.

## **REVENUE (NO. 2) BILL 2007**

### **Resumption of debate on Second Reading which was moved on 2 May 2007**

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

**MR SIN CHUNG-KAI** (in Cantonese): Sorry, President, since a Bills Committee was not set up for this Bill, there is no report tabled by the Chairman of the Bills Committee.

The Bill mainly seeks to reduce tax. We support this much-anticipated tax reduction, albeit it should have been made last year. If it was made last year, the Government would not have such a headache this year. Why? Because our surplus would not have surged from \$5-odd billion to \$50-odd billion. I hold that in determining the timing of tax reduction, the Government should also assess the revenue it has. Of course, the Secretary has pointed out time and again that it is difficult to estimate revenue, yes, but the Government should also strive for accuracy.

President, the Government introduced a series of tax increases in 2003, which has, in fact, increased the burden of the public, in particular that of the sandwich class. As a matter of fact, in the last round of tax increase, the tax liability of those from middle-lower class (the middle-lower echelon of the middle class) has been increased by over 20%. This tax reduction can indeed alleviate the burden of this group of people and is also in line with the aspiration of the people of Hong Kong.

However, we still have expectation for future tax reductions. For instance, we hold that there should be considerable adjustment to the child allowance in view of the present situation. Although the Government seems to have made a certain extent of adjustment in this tax reduction, we all know that with respect to raising a child, the middle class bears a heavy burden for their education, taking into account the increasing number of Direct Subsidy Scheme schools opened by the Government.

The Democratic Party has all along been lobbying the Government for a child education allowance, but the Government has turned down our proposal and stated that it would only increase the child allowance. However, I hold that, on the whole, the Government must note the difference between this allowance and the one for adults. In fact, we all understand that it is much more expensive to raise a child than to provide for an adult. I hope that the Government can take this into consideration in its review in future.

In respect of this tax reduction, the Democratic Party supports and welcomes it, except that it has come a little late, like a late spring. We, however, support the Second Reading of the Bill tabled by the Government today.

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

(No Member indicated a wish to speak)

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, in the 2007-2008 Budget, the Financial Secretary proposed a number of concessionary revenue measures. The object of this Bill is to amend the Revenue Ordinance (Cap. 112) to implement the four proposals announced in the Budget.

The Bill was set down for First and Second Readings in the Legislative Council on 2 May. The House Committee decided in its meeting on 4 May that no Bills Committee should be formed for the Bill and support was given for the Bill to resume its Second Reading. Here I would like to thank Honourable Members for making possible the speedy resumption of the Second Reading of the Bill.

The first proposal of the Bill is a one-off reduction of salaries tax and tax under personal assessment for 2006-2007 by 50%, subject to a ceiling of \$15,000. The reduction will be reflected in the taxpayer's final tax payable for 2006-2007.

The second proposal is to revert the marginal tax bands and marginal tax rates for salaries tax to their levels in 2002-2003. In other words, each marginal tax band will be widened from \$30,000 to \$35,000 and the highest two marginal tax rates will be reduced from 13% and 19% to 12% and 17%, respectively.

The third proposal is to increase the child allowance for salaries tax from \$40,000 to \$50,000 for each child and introduce an additional child allowance of \$50,000 in the year of assessment in which the child was born.

The fourth proposal is to increase the maximum amount of deduction for self-education expenses from \$40,000 to \$60,000.

Subject to the passage of the Bill, the one-off reduction by 50% of salaries tax and tax under personal assessment shall be applied in 2006-2007, whereas the other three remaining proposals shall come into force from 2007-2008 onwards.

The Government has always upheld the principle of financial prudence and we will only spend when it is necessary and save when we should. Given the better-than-expected tax revenue and fiscal surplus in the previous year, we have proposed a number of revenue concessionary measures to fulfil our pledge of leaving wealth with the community where affordable. We are grateful for the advice tendered by Members, especially during our compilation of the Budget. Earlier on, Mr SIN Chung-kai has once again put forward his views and we will convey them to the Financial Secretary for his consideration when compiling the Budget for the next financial year. We are glad to see Members of the Council and the general public being supportive of the tax reduction and the other



revenue concessions on this occasion. We hope that the Council can pass the abovementioned Bill.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Revenue (No. 2) Bill 2007 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Revenue (No. 2) Bill 2007.

Council went into Committee.

### **Committee Stage**

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

### **REVENUE (NO. 2) BILL 2007**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Revenue (No. 2) Bill 2007.

**CLERK** (in Cantonese): Clauses 1 to 9.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1 to 9 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **REVENUE (NO. 2) BILL 2007**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, the

Revenue (No. 2) Bill 2007

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Revenue (No. 2) Bill 2007 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Revenue (No. 2) Bill 2007.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect.

First motion: Policies on sustainable urban development and green buildings. I now call upon Prof Patrick LAU to speak and move his motion.

## **POLICIES ON SUSTAINABLE URBAN DEVELOPMENT AND GREEN BUILDINGS**

**PROF PATRICK LAU** (in Cantonese): President, I move that the motion as printed on the Agenda be passed.

The deteriorating problem of climate change prompts me to propose this motion. With incessant global warming and rise in sea level, the world we live

in is on the brink of an ecological disaster. Alarms are sounded. If the environmental problem is not given due attention, our next generation will face a crisis that is irreversible.

A report from the Intergovernmental Panel for Climate Change (IPCC) of the United Nations points out that the present level of carbon dioxide concentration in the atmosphere is the highest ever in 650 000 years. Temperature has risen by 0.74°C compared with that in the last century. Global warming accounts for the melting of ice at the poles, harvest failures, unusual spells of heat waves and frequent occurrence of torrential rain. The sea level in the 21st century may rise by more than 18 cm to 59 cm and hence threaten major financial cities like London, New York and Shanghai. Against the backdrop of globalization and in the face of the threat of an ecological disaster, a seaport like Hong Kong cannot expect to be immune.

Due to the impact produced by the environment on the economy, the definition of sustainable development has changed from calling for a balance between the environment and development to striving for development propelled by the interaction of cultural, economic and environmental aspects in a community. The goal is to achieve a fair and optimal use of natural resources down the generations. The American Institute of Architects defines sustainability as "the ability of a society, ecosystem, or any such ongoing system to continue functioning into the indefinite future without being forced into decline through the exhaustion or overloading of key resources on which that system depends".

In other words, a sustainable and balanced environment is essential to a steady supply of resources, hence providing the momentum for economic growth and the continuous development of society. This will in turn enable a sustainable and balanced development of society on its cultural, economic and environmental fronts.

The major source of greenhouse gases which accounts for global warming comes from buildings. Information from the Canadian website of Architecture 2030 shows that buildings are the main source of energy consumption and gas emission in the world, even surpassing those from the industries and vehicles.

In the United States, greenhouse gases emitted by commercial and residential buildings account for 38% of the total amount of greenhouse gas

emission. It is estimated that in the next 20 years, the amount of greenhouse gases emitted in North America alone would rise by 36% and energy consumption by 37%. Global energy consumption during the same period will surge by as much as 54%.

Therefore, the Royal Architectural Institute of Canada is taking active steps to promote a plan to reduce greenhouse gas emission by a significant amount and to lessen the dependence on fossil fuels. Under the Kyoto Protocol, by 2010, the emission of six greenhouse gases including carbon dioxide by developed countries is to be reduced by 5.2% as compared to that in 1990.

However, in Hong Kong, as the Government has not set up any energy efficiency standards for buildings, most of the air-conditioning in the commercial buildings is always turned on, hence energy consumption and gas emission are colossal. Therefore, the Government should take the lead to introduce "zero consumption" green buildings in the construction of the new headquarters at the Tamar site and other public buildings. This would serve as the model for buildings in Hong Kong.

The new federal government building in San Francisco also adopts an effective air ventilation design which enables 70% of the floor area to obviate the need for air-conditioning. Most of the working areas are illuminated by natural light and there is no need to turn on lights during daytime. President, I have been to that place and I think that it is really a building worth paying a visit.

The Bank of America has a 288-m tall office tower in Manhattan. There thermal energy recycling technology is used to reduce energy consumption. The office tower has a tall ceiling on each floor. The glass windows have superb insulation effect. The air-conditioning room at the basement produces ice during night-time when power consumption is low for use to keep the room temperature low during daytime.

In Guangzhou, a 69-storey "zero consumption" building is being constructed. The unique exterior design of that building is such that it can attract strong winds to go through a wind power generator situated at the waist of the building. The power so generated can meet the needs of the entire building while the wind stress experienced by the building is reduced. On top of these, the rainwater collected can be used by the tenants after filtering and purification.

Using cutting-edge technology to construct green buildings would only incur a 5% increase in construction costs. The amount can be offset quickly by the amount of operational expenses saved. Therefore, new buildings, especially government buildings, should aim at such kind of "zero consumption" architectural design. In this way, a spearhead effect can be achieved, making possible for others to follow suit.

These green buildings are the kind of architectural design which should be found in a city with sustainable development. To encourage less energy consumption and gas emissions, the Government should take active steps to introduce a "green building labelling" system and fully assess the environmental performance of buildings during the design and construction stages, and after their operation. The areas to be assessed should include energy efficiency, air ventilation and also greening, household waste treatment, water recycling, the application of renewable energy, and so on.

I would like to point out that greening does not just mean rooftop gardens and greening of the external walls. Of greater importance is the so-called "greening ratio". By that it refers to the amount of green space calculated at a ratio of the ground area, excluding the vertical or aerial space.

Hong Kong does not have any green building labelling system. This accounts for the fact that although the Hong Kong Building Environmental Assessment Method (HK-BEAM) has been introduced for 10 years and about 100 buildings are HK-BEAM certified, the scheme has not covered all the buildings in Hong Kong. This is because participation in the scheme is entirely voluntary. I know that there is a scheme called CEPAS which is introduced by the Government. The consultancy report for CEPAS is complete and the Construction Industry Council Ordinance is also passed. I hope that the Government can make a report on the actual progress of the above and take follow-up action.

The international trend is that more and more cities have introduced a building environmental performance assessment scheme (BEPAS) with support from their respective governments. Under the BEPAS, all buildings, irrespective of whether they are old or new, are required to undergo an environmental performance rating. This will serve as a quantitative indicator for sustainable development while also encourage buildings to upgrade their energy efficiency and become more environmentally-friendly.

In Japan, the Tokyo Municipal Government has since 2002 introduced a mandatory rating scheme for green buildings. Under the scheme, all construction sites for new buildings or expansions with a footprint of more than 10 000 sq m are required to undergo a rating in which one to three stars are awarded. Although it is not specified that buildings of a specific area have to get what kind of rating, developers must state the rating obtained by the building in the prospectus for reference by prospective buyers. Currently, about 200 buildings in Tokyo will undergo such a rating each year.

In the United States and Canada, the Leadership in Energy and Environmental Design (LEED) scheme gives ratings in platinum, gold, silver and certificate to buildings. In Vancouver, starting from 2004, all government buildings with a footprint of more than 500 sq m should at least attain the gold rating. This is meant to enable government buildings to become the role model for the industry. The municipal government even makes more green buildings its theme. By resorting to planning exemptions and undertaking replanning, green developments that are in line with public interest are carried out. Since 2005, the city has made it mandatory for almost all major development projects under replanning to attain a rating of silver or higher.

In mainland China, our Motherland, the 11th Five-Year Plan advocates green architecture with "four savings and environmental protection" and new guidelines on energy and building design are introduced. What are the four savings? They are savings on energy, land, water and materials. The aim is to protect the environment and reduce pollution, in the hope that buildings can be in harmony with nature and co-exist with it. The Chinese Government announced in mid-2006 a green building rating scheme. Though participation in the scheme remains voluntary at present, the scheme is gradually changing over to being mandatory.

As building environmental performance assessment schemes are accepted by more and more governments around the world, the Hong Kong Government should keep abreast of the global trend and formulate a green building policy in public interest. First, all government buildings or those of subvented organizations and which exceed a certain specified floor area must attain a certain standard, such as a rating equivalent to gold or higher. Second, all newly approved major development projects must attain a rating of silver or higher. Third, all other new or redevelopment projects exceeding a certain specified area must pass a building environmental performance assessment, the

results of which should be submitted together with the application for building approval for reference purpose. The results of the rating must be made public and available for public inspection.

President, if we are to make the city we live in truly sustainable, I think that efforts should be made at the planning and building stages. There should be close monitoring of the day-to-day operations and policies on sustainable urban planning and green buildings should be introduced. The Government should take the lead in these efforts. It should play the role of a model in the government headquarters project and in other projects for public buildings. It can also offer green incentives for compliance by market players such that green buildings can be promoted on a comprehensive scale gradually.

With respect to making our city sustainable, apart from improving current planning, the Government should also introduce the sustainable urban planning concept of a green city. When developing areas in the New Territories or in the outlying islands which have not seen any previous development, the Government should consider how a "zero pollution" low-density community can be built. Efforts should be made to relieve the pressure of high-density developments in the urban areas. As in the case of Ma Wan and Discovery Bay, full-scale application of green technology should be made from the road planning stage. This would mean considering the use of exhaust-free railway as a transport system, building a pedestrian walkway network that would encourage people to walk, carrying out full-scale greening in the community and constructing buildings that adopt a design in harmony with the natural environment, and so on. All these are meant to reduce the pollution problem by starting at the planning level.

The idea of a green city may not be realized so soon. But the most important thing is that people can reach a consensus on sustainable urban development and green buildings. This will enable a close partnership between the legislative and executive branches and in turn make it possible for the expeditious implementation of the relevant policies. This is especially the case because under the new administrative framework, we will set up a committee for discussing such matters and people from the Development Bureau, Environment Bureau, Transport and Housing Bureau, and so on, will join such discussion. So co-ordination is very important. In my opinion, all the relevant departments should work together. The new Development Bureau should address the problem of a lack of co-ordination among government departments in planning



and project development by setting up a long-term and highly efficient vetting and approval system for development projects. The Development Bureau which is given the final say should be given the responsibility to orchestrate the work of various departments. This will eliminate the problem of various departments just minding their own business as they are doing now. In the end, a decision which is based on the interest of the community as a whole can be made.

At the end of the day, I hope we can achieve the goal of sustainable development as stated by the United Nations World Commission on Environment and Development in 1987, that is, "meeting the needs of the present without compromising the ability of the future generations to meet their own needs" and which was further elaborated in 1996 as "ensuring adequate shelter for all and making human settlements safer, healthier and more liveable, equitable, sustainable and productive."

I so submit. I hope Members can lend their support to the motion proposed by me. Thank you, President.

**Prof Patrick LAU moved the following motion: (Translation)**

"That, in view of the United Nations' earlier warning that within this century, global warming will cause hundreds of millions of people to face disasters such as freshwater shortage, famine, flooding, diseases, and the rise in sea level will even pose a threat to the coastal lands in Asia including the Pearl River Delta Region, from which Hong Kong can hardly be immune; in order to alleviate the greenhouse effect arising from imbalanced urban development and to eliminate the adverse effects of undesirable high-density building developments on weather and the environment, this Council urges the Government to expeditiously formulate and implement policies on sustainable urban development and green buildings, including:

- (a) reviewing the existing legislation relating to urban planning and buildings, and introducing sustainable planning and green building principles;
- (b) studying the formulation of a Code of Practice for introducing a 'green building labelling' system, and fully assessing the

environmental performance of buildings during the design stage and after their being put to use on the basis of energy efficiency, greening ratio, air ventilation, renewable energy, household waste treatment and design parameters which are conducive to good weather and urban environment; and

- (c) the Government and public organizations taking the lead in fully applying the relevant policies to both new and existing public buildings, educating the public, and offering incentives to actively promote market compliance,

so as to alleviate the impact of global warming on Hong Kong and to build a pleasant city which is sustainable through the implementation of policies on urban development and green buildings that are conducive to good weather and environment."

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

**PRESIDENT** (in Cantonese): Dr KWOK Ka-ki will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

I now call upon Dr KWOK Ka-ki to speak and move his amendment to the motion.

**DR KWOK KA-KI** (in Cantonese): Madam President, I move that Prof Patrick LAU's motion be amended.

Madam President, Prof LAU has picked the right time in moving this motion today. Two events have taken place and amazingly they fit the occasion perfectly. This morning, the Public Works Subcommittee gave us a great example of a bad lesson. It is about how the direction of sustainable development is not followed. As we all know, the Queen's Pier is part of our cultural heritage and it has been graded a Grade 1 historical building, the Government has not paid any respect to the rating made by the experts and it is bent on having its way to seek funding to demolish it.

The second event is that as a result of the recent reorganization of the government structure, the number of 11 Policy Bureaux has become 12, with the addition of a new Policy Bureau called the Development Bureau. Unlike past practice, work in environmental protection no longer comes under the ambit of the Development Bureau. And most amazingly — and I would think that there is something unusual about it and though Members may not be aware of it — all the bodies related to planning, such as the Antiquities Advisory Board, will be subsumed under the Development Bureau. If we watch the moves taken by the Government today, we can anticipate how precarious and fragile sustainable development in Hong Kong would become.

Why can the bureau not be called Sustainable Development Bureau? An Honourable colleague of ours, Ms Audrey EU, has raised this point. I would like to quote a line from what the United Nations World Commission on Environment and Development said in 1987. It said that the mode of development should be one "meeting the needs of the present without compromising the ability of future generations to meet their own needs". What has our Government done over the past few decades? Leaving aside distant past, despite the clamorous calls from the public after 2003 to protect our natural assets, there would be no turning back if the Victoria Harbour which we treasure most is reclaimed into land. Such is what may become of some of the assets we pass on to our future generations.

What then is our Government doing? It is bent on having its way and sparing no efforts in doing it. In the law court and administratively, it is exhausting all ways and means to proceed with reclamation. Last week, some Honourable Members raised the issue of wall buildings. This motion on wall buildings was voted down as expected because of some behind-the-scene work done by the Government which it should not have done. But this string of events is actually related. Why are there wall buildings? It is because no one cares about sustainable development. Prof Patrick LAU has just made the point very clear. He says that on the one hand it is about architecture and on the other it is about planning. So what have we done in planning?

Prof LAU once asked me why I added the two points on reorganizing the Town Planning Board (TPB) and property developments above the stations of the two railways. Let me tell him why with the help of an example. The incumbent Chief Executive was back in 2003 the Chief Secretary for Administration and he was the chairman of the Council for Sustainable

Development. He once said, "To achieve this vision of a society that is economically vibrant and socially inclusive, and that values its natural and cultural heritage, we need to do more than simply promote and encourage the concept of sustainable development. We have to implement them as a core feature of our future plans and projects." One of the tasks to be done is to take forward the Johannesburg Plan of Implementation, for this is also a plan which our nation has proposed and is committed to enforcing it.

He also said very well that it was one thing to have an ideal, but another to realize it. Many cities and countries were working hard on it. So did the international community. They all hoped that there could be actual progress in the work on sustainable development in the long run. He said that it would come to our notice that in such a process, deviation from the original ideal could be made easily and a lot of time would be spent instead on issues that would only bring in short-term economic and political benefits.

After listening to these remarks, I had a feeling that back then Mr TSANG was on our side. Because what he said is precisely what we are striving for now. Just having an ideal is not enough, there should be action to go alongside with it. It is not enough if there is only an ideal. Many people seek economic and political benefits that may only last a very short time. This is what the Government is doing. Why do we want to reorganize the TPB? Had the TPB been able to play its gate-keeping role, we would not have seen the kind of planning disaster that we have in Hong Kong.

The existence of wall buildings which is a result of bad planning leads to a rise in the temperature in the urban area. People then consume energy which they should not be doing so, such as turning on the air-conditioners. They are doing things that are not conducive to sustainable development. Why? Who does not want to see better planning in our city so that there can be a better flow of air into the city? Had this been discovered earlier, places like Central and Causeway Bay would not be like what they are now. Why was this not done? What in fact is the TPB? According to the administrative framework of the TPB, its secretariat is the Planning Department of the Government. Its Chairman is a government official. In fact, before I was returned to this Council, the Government once responded to questions raised by Members in this Chamber. It said that its officers were neutral and the secretariat only took care of clerical work and the Chairman was just responsible for presiding over meetings.

If this is really the case, then why can the TPB not become independent? If this is the case, why must its Chairman be an official? The cat is out of the bag. Mr TSANG is actually telling us that what they say is one thing and what they do is another. It is very difficult to say something and answer it with action. So please do not make any reckless remarks next time, because what you say will be written down and the people will be able to read it.

I will now give some examples. These are very difficult things. But other people have managed to do it. In South Korea there is a very famous Cheonggyecheon development project and I am sure Prof LAU must be well aware of it. In the 1960s and 1970s, flyovers and shopping malls were built in Seoul's Cheonggyecheon area. It was thought that such developments were good. There was actually a time when Cheonggyecheon had indeed transformed into a commercial district. But gradually people found that this would not work. The people did not want to go there, for the place was choking with filthy air and it was like an open nullah. The mayor of Seoul said that he could not stand it — and this is really an ironic twist of events — for this mayor who wants to transform Cheonggyecheon was actually the manager responsible for the Cheonggyecheon project years ago. He was bold enough to denounce his past and pursue his present dream. He thinks what he did was wrong and so he wants to set things right again.

What has this mayor done? He called 700 public hearings and convinced everyone that he vowed to restore Cheonggyecheon into a green stream that befits its name. Our officials would also hold some so-called public hearings when they go about doing some planning. But these are actually done rather secretly. We know that in the case of the planning in Central, notice was given three days in advance for a meeting and a public hearing was held one week after that. The idea is that it would be best if no one comes to waste their time. They are just prepared to hold some sham consultation. I think our officials should feel ashamed when they know what other people are doing.

After the restoration of Cheonggyecheon, the temperature in the city centre of Seoul falls by 3.6 degrees. Prof LAU, I do not know what would be the energy efficiency if we multiply 3.6 degrees by 10 years, 100 years or 1 000 years. I am sure anyone who supports sustainable development will agree that this is something of paramount importance. But what has our Government done?

The other thing is that since it is so difficult, then let the Government do it. Our Honourable colleagues have said that developers cannot be asked to carry out sustainable development, as they have to take care of the interests of the shareholders. Why do I add to the motion the points on the property developments above the stations of the two railways, the Urban Renewal Authority (URA), West Kowloon and waterfront developments along Central, Wan Chai and Causeway Bay? The reason is that this is one of the ways that the Government can show that it is doing something. But the Government says that the property developments above the stations of the two railways have gained the approval of the TPB and nothing can be done. The URA also says that nothing can be done about a project that has been approved by the TPB and since the development project in Central has gained the approval of the TPB, so nothing can be done about it. When this is the case, how can we expect to have any sustainable development?

If the Government does not take the lead in this matter..... many places in the world have paid a heavy price for that, but they will wake up. Boston has spent so many years on the Big Dig and hundreds of millions of dollars are spent. As the bureaucrats in Hong Kong see it, who would spend hundreds of millions of dollars on the land for such a stupid thing? Madam President, they are not putting up buildings, for the highway they build is a waterfront area and there would not be any buildings on it. But our Government is saying that 800 000 sq ft of land in the reclamation site will be used to build a commercial building. There will only be more air-conditioning. There will not be any need for winds. Nor any need for open space.

This Government is making us furious. I hope Honourable colleagues can support my amendment. I so submit. Thank you, Madam President.

**Dr KWOK Ka-ki moved the following amendment: (Translation)**

"To delete ", in view of" after "That" and substitute with "this Council agrees with"; to delete "this Council urges" after "the environment,"; to add "has" before "to expeditiously formulate"; to add "(a) reorganizing the Town Planning Board (TPB), appointing a non-government official as its chairman and setting up an independent secretariat, so that the decisions of the TPB can more fairly and truly reflect public opinion;" after "including:"; to delete the original "(a)" and substitute with "(b)"; to delete the original "(b)" and substitute with "(c)"; to delete the original "(c)" and substitute with "(d)"; to delete "fully" after "taking the lead in";

and to delete "both new and existing public buildings" after "relevant policies to" and substitute with "various development projects, including property developments above the stations of the two railways, redevelopment projects of the Urban Renewal Authority, the West Kowloon Cultural District, waterfront developments along Central, Wan Chai and Causeway Bay, as well as public buildings to be developed in the future". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr KWOK Ka-ki to Prof Patrick LAU's motion, be passed.

**MR HOWARD YOUNG** (in Cantonese): Madam President, the world has set its eyes on the problem of global warming and abnormal conditions in climate. Under such a macro trend, the climate of Hong Kong cannot hope to be immune from all these. For the last 10 years or so, the average temperature in the rural areas in Hong Kong rose by about 0.2°C, whereas temperature in the urban areas rose by 0.6°C or three times that of the rural areas. Moreover, Hong Kong does not experience any cold weather at times when it should. Last year we had the eighth warmest winter in 122 years. The media even dubbed it as the "disappearance of winter in Hong Kong". At the same time, the weather is not too hot when it should have been hot. On 3 April this year, it was the coldest day in April for 10 years and a cold weather warning was issued. Experts tell us that the reasons for all these are not just the influence of global climate change on a macro front, but also the undesirable urban planning in Hong Kong. Too many buildings are packed together, too many cars are running on the roads which are always congested and there are no measures to promote energy saving. These have all played a part.

As early as eight years ago, that is, in 1999, when the Legislative Council debated a motion on environmental protection, we from the Liberal Party had put forward the idea that importance should be attached to sustainable development. We have always been urging the Government to ensure that there is a policy for sustainable development in Hong Kong. Doubtless in recent years the Government has indeed done something on that, such as a policy on sustainable development is announced, the plot ratio of the outline zoning plans has been readjusted, stricter restrictions are imposed on the height of buildings in new developments and guidelines on sustainable development assessment and

renewable energy in respect of government works projects are issued. However, there seems to be still quite a lot of room for improvement in respect of urban planning.

As we said during the motion debate on the wall effect of buildings last week, if the authorities did not pay any attention to the problem, it would only go from bad to worse. The result would be that it would only be unbearable hot during the summer and more electricity would be needed to lower the temperature and more air-conditioning is required. The result is that the heat island effect in the city would only intensify.

Furthermore, in terms of urban planning, the authorities have not paid any attention to the special characteristics of each district and there is only a rigid and indiscriminate application of the planning guidelines. The result is that community planning in the new towns is a drab uniformity. There are no local colours there. Among new towns like Tung Chung, Tin Shui Wai, Ma On Shan and Tseung Kwan O, some of them used to be small fishing villages, some had wetlands and fields for farming, and some were squatter areas. They all had their local colours. But after planning undertaken by the Government, the public housing blocks, schools or community halls in these districts all look alike in configuration. There are high-rise buildings everywhere that are not much different from each other, and people cannot tell which district they are in once they walk into it. This is a terrible waste of the original characteristics of the places and it can even be considered a destruction of the traditional cultural heritage there. Hence these districts are deprived of the chance to rely on their traditional characteristics to develop the local economy and culture in a sustainable manner.

Moreover, in terms of urban planning, the authorities have not considered the impact on the lifestyle of the local people. In the case of the Shing Mun valley sports ground in Tsuen Wan, although the facilities there and the venue itself are excellent, there are no convenient transport links and it is not accessible by MTR. People who go there for exercise have to make numerous transfers on public means of transport before they can get there. Or in the case of Tung Chung, the place does not have any swimming pool because it was thought that the population there did not justify the building of one. It is only when a number of children had got drowned as they played in the nearby stream that the authorities said in great haste that a swimming pool would be built. In Tseung Kwan O, there have been many accidents related to bicycles in recent months and



this shows the fact that planning for cycling tracks there leaves much to be desired. Planning there is far from satisfactory and this causes not only a waste of resources but also a loss of human lives. The Administration should learn from these painful experiences and lessons and it should adopt a people-oriented approach in urban planning and take into account the principle of sustainable development.

As for the promotion of green buildings, although both the authorities and the industry have in recent years stepped up their efforts in this respect, the problem is that there is still a lack of understanding of green buildings in society. Though there has been the appearance of things like green balconies lately, these are still a far cry from taking forward the concept of green buildings.

In my opinion, if green buildings are to be promoted among the people, the Government must strengthen publicity and education in this regard. This would mean the Government taking the lead to adopt green measures in its construction projects so as to serve as a model to the business sector while also enabling the people to get hands-on experience of the advantages of green buildings. In view of this, the authorities should have a set of clear and workable green labels. However, as the assessment costs concerned are very high, so the Government must think more on how this concept can be promoted.

Having said that, if it is said that there should be a mandatory application of the concept of green buildings in the property developments above the stations of the two railways as well as in other large-scale projects, then we would have a lot of reservations about the idea.

Madam President, I so submit.

**MR WONG KWOK-HING** (in Cantonese): Madam President, from the end of last year to the beginning of this, the people of Hong Kong experienced the warmest winter in record. Everyone could feel the great impact of the weather getting warm. Hence, global warming has changed from a distant issue to a pressing problem that the Government and all the people of Hong Kong have to face. However, when this environmental protection issue is linked up with the lifestyle of the people here in Hong Kong, we will find that if sustainable urban development is to be promoted, or if the design of green buildings is to be encouraged, there has got to be a fundamental change in the values held by the Government and the people alike.

Prof LAU has proposed that the existing legislation relating to urban planning and buildings should be reviewed; sustainable planning and green building principles should be introduced; and a green building labelling system should be implemented. He has also suggested a consideration of factors like energy efficiency, greening ratio, air ventilation, renewable energy, household waste treatment and design parameters which are conducive to good weather and urban environment. However, these are only hardware developments and if there is no matching software, even if such nice green buildings are built, they would only become selling points of property developments and can never attain the goal of sustainable development. I would like to point out that the importance of matching software lies in its being able to effect a change in the lifestyle of the people by first developing the recycling industry.

Madam President, Hong Kong takes pride in calling itself a world-city and the people are used to leading a materialistic existence of comfort and convenience. But this lifestyle produces huge wastes. Each day as many as 9 000-plus tonnes of municipal solid waste are sent to the landfills. More than 6 000 tonnes of construction waste are produced every day. For special types of waste such as chemical waste, more than 1 000 tonnes are produced every day. On average, every person in Hong Kong dumps 1.36 kg of waste every day. The result of this is that the landfills in Tseung Kwan O would reach capacity prematurely by 2011. To cope with the problem, the Government makes an outrageous proposal that 3 hectares to 5 hectares of land at the Clear Water Bay Country Park be "borrowed" for eight to 10 years as a temporary landfill.

Perhaps some people would ask, as the motion topic today is on global warming, density of buildings and such like issues in respect of air, how are these related to wastes? The fact is excessive consumption of energy in the production of consumption goods which are dumped quickly will cause wastage. When this is added to pollution caused by improper disposal, this is precisely the main reason why city life leads to greenhouse effect. The issues in environmental protection which the Government is most concerned about have always been seawater pollution and air pollution. As for the problem of solid waste, what is needed is only that some remote place can be found to dump it. That would be fine. However, as many as 43% of the waste dumped every day, that is, some 7 000 tonnes, can actually be recycled. This includes paper (which takes up one third of the total), metals (one third) and plastics (a quarter). Last year, the value of waste materials and articles recycled was valued at \$4.5 billion.

Now 90% of such waste is sent to the Mainland. Why can the SAR Government not take the lead to develop the recycling industry so that all the people of Hong Kong can take part in it?

First, efforts can be made to promote separation at source and effect change in the habits of Hong Kong households. One of the reasons leading to high costs in the recycling industry is that separation of household waste in Hong Kong is poorly done. Many of the materials that can be reused are contaminated and much manpower is needed to undertake separation work. In this way, costs have become very high and not many people in Hong Kong can take part in these efforts. The green ideas thus fail to gain entry into the households, so to speak, and they fail also to become part of people's life. Therefore, the Government should model on what is being done in the Taipei municipality to introduce a full-scale separation of household waste at source. Not only should ordinary articles like plastics, paper and aluminium cans be disposed of separately, even food remains should also be separated according to their nature. In this way, there can be a complete change in people's ideas about waste. This will in turn reduce the pollution caused by waste disposal and the need for more landfills.

Madam President, another advantage of promoting the development of the recycling industry is the creation of more jobs for the low-skilled workers. Last year, the value of waste recovered in Hong Kong amounted to about \$4.5 billion but most of it was sent directly to the Mainland for processing and so jobs and business opportunities were not created in Hong Kong. If the Government can take the lead and foster a recycling industry which is one-stop in nature and encompassing recovering, handling, processing and recycling, this will not only create employment but also reduce energy consumption in transport and even the emission of exhaust gases. Of course, the extremely high land prices in Hong Kong would lead to a rise in costs given the fact that the recycling industry uses a lot of land. So if the Government does not put aside the concepts of giving top priority to economic matters and allows itself to be led by the market, and instead adopts environmental protection as its major concern, then the kind of waste separation work which we have now, that is, one which only exists in name and emphasizes depletion rather than anything, will only perpetuate.

The key to sustainable urban development lies in the people living in a city appreciating the importance of environmental protection and starting to depart

from a pattern of waste by first changing their habits. With these remarks, I support the original motion and the amendment. Thank you, Madam President.

**MS AUDREY EU** (in Cantonese): President, after reading through the wording of the original motion proposed by Prof Patrick LAU, I thought for a long time and wondered what kind of an issue he wished to talk about. Was it the problem of global warming or green buildings and sustainable development? If it is about the problem of global warming, then a lot of issues would be involved, not just that of green buildings. If it is about sustainable development or green buildings, the topic is of course very broad. Just now Dr KWOK Ka-ki has mentioned in his speech the debate on the Queen's Pier which was held this morning and it is a very important issue in sustainable development. Therefore, I did not know if I should consider the main arguments of the motion and propose an amendment. Then I thought it would not matter at all, for the position of our Civic Party is always that we will support anything that is consistent with our principles. It would not matter if the key objective is about warming or sustainable development.

I listened very carefully to the speech made by Prof Patrick LAU earlier. He said that he had great expectations for the new Development Bureau and that it would take the lead to do a lot of co-ordination work and solve many problems. I was very worried when I heard him say these things because this might be his own wishful thinking. First, we know that the high land premium policy is practised in Hong Kong. A good portion of our surplus comes from the land sales. If land is a major source of income for Hong Kong, then every inch of land we have is like gold. When we are after the greatest benefits, often times this would mean that environmental concerns will have to be sacrificed. We can look at the green balconies, which have become a means for the developers to make money and they are not used for any green purpose in reality. I see that Prof Patrick LAU is shaking his head. This is the first thorny issue that we face.

The second thorny issue that we can see is the kind of progressive development mentality or argument that Mr Donald TSANG presented when he was running for re-election as the Chief Executive. He made it clear from the outset that when he assumed office as the Chief Executive for the third term, he would set up a Development Bureau with the aim of speeding up infrastructure

projects. We know that infrastructure projects are most likely to cause environmental problems. But he asked the Financial Secretary to oversee this Development Bureau and he asked the Chief Secretary for Administration to take charge of environmental protection matters separately. How can there be any co-ordination between the two? Besides, there is a big problem about the name of that Bureau. Earlier on, Dr KWOK Ka-ki said in his speech that I had raised a question on that point. I raised that question in my article printed in the forum of the newspaper *Ming Pao*. I asked why this could not be called Sustainable Development Bureau but Development Bureau. I think we can see what kind of things he is aiming at when he calls it by such a name.

Patrick LAU says that there would be green buildings after the Development Bureau is formed and there would be green and sustainable development. I wish to remind Members that they should take a look at the report made by the Council for Sustainable Development in February 2005 in which it was stated that the Government should enact laws to realize the principles of sustainable development. However, the Government churned out a report quickly in just three months and the words about legislation were left out. That is why I read Prof Patrick LAU's motion very carefully and I found that no mention is made whatsoever of enacting laws. This is also the reason why the Council suffered a disastrous defeat in the motion on wall buildings last time. Prof LAU's view is to leave a great deal of flexibility and there must never be any laws enacted to regulate such matters.

But if the form of guidelines is used..... I think when the Secretary speaks later, he will say that the Government has done a lot in green buildings. He will say that the former Chief Executive TUNG Chee-hwa pledged in the policy address in 2001 that a green building labelling system would be set up. The Buildings Department commissioned consultants to conduct a study in 2002 on the setting up of a green building labelling system. On top of these, Secretary Michael SUEN said in 2004 that the green building labelling system would be beneficial to all sectors in society, including the developers, professionals in the field of architecture, and so on. The system would lead to recognition of their creative ideas in architecture and thereby enhance their professional image and reputation.

Secretary Michael SUEN also pointed out that the green building labelling system would also be useful to prospective home-buyers because they can have

more information at hand to make a prudent decision. He also cited overseas experience and said that a building assessment and labelling system would help raise the overall quality of life. But is this what we have seen all through the years? Do we see such results? I think when Prof LAU speaks for the last time, he can tell us whether or not a lot has been achieved since we have already set up so many labelling systems.

I have great expectations for the professions in Hong Kong. I think the professionals are of a very high standard. In terms of planning, design, architecture, engineering, and so on, I have no doubt that they have reached world-class standard. If the professions are allowed to develop and if they are committed to the cause of environmental protection, all these can be achieved actually. But if money comes first all the time and if everything must give way to progressive development and when no heed is paid to sustainability, then what is said will in the end be reduced to empty talks.

President, I have seen the four designs of the Tamar site project recently. We are to choose one out of these four. The design of the future Legislative Council Building is also included. Each of these designs is very attractive. There is one with reflective glass panels. For me my concern is always about whether the designs are environmentally-friendly or not. I have made a lot of efforts examining these designs and I have sought professional advice too. I wish to know whether it is environmentally-friendly for a design to use so much glass. Some people say that the Legislative Council will look like a fish tank because glass is found everywhere. People can see clearly when we have a meeting. I asked if this was environmentally-friendly, but no one could give me a reply on that. I asked the Government if it could send someone over to explain things but it said that it was not possible. What can we do under such circumstances? We are almost like making a choice with our eyes shut.

President, it all boils down to the question of what exactly the bottomline is. The United Nations Intergovernmental Panel on Climate Change releases its fourth report this year in four phases. In the three parts that have already been made public, it is proved that climate change and global warming are indeed related to the way we live. And the building design in Hong Kong is posing a serious problem.

So President, I support the original motion and the amendment with all the spirit found in them, but I really hope that the Government can have the

determination to achieve sustainable development and make green buildings more popular.

Thank you, President.

**MR LEE WING-TAT** (in Cantonese): Madam President, I speak in support of the original motion and the amendment.

On the question of the design of green buildings in Hong Kong, the state of development, be it described as backward or slow, is still not satisfactory. As far as I know from my rather piecemeal contacts and from the meetings attended by me, it was only in the past two or three years or so that the Electrical and Mechanical Services Department (EMSD) began to adopt some trial measures in the government buildings, such as collecting heat by placing solar panels at the rooftop. These measures are rather primitive in nature.

I once asked colleagues from the Environmental Protection Department and the EMSD whether or not these measures would be adopted in all government buildings. They said that it would certainly not work because things were very complicated. The implication of this remark is that what the EMSD is doing are experiments and things of a window-dressing nature. They only serve to tell other people that such facilities do exist in Hong Kong.

Besides, now many of the green designs and applications found in government buildings..... Of course, I know that there are certain units in the Government that have set up the post of green managers to review whether or not the department or unit concerned is doing a good job in this respect. I think this is of course a progress. I hope that the Government can set up a centralized committee to examine the annual reports submitted by the green managers in each department or unit to see if any progress has been made.

My speech today will focus on a discussion of private buildings. Secretary, this is because green work in the private buildings in Hong Kong is extremely unsatisfactory. All along the development of buildings in Hong Kong has been affected by a development concept that places overwhelming emphasis on property development. In other words, there must be no obstacles standing in the way of building and construction even when things do not seem to

fit in so nicely and well. I recall about five or six years ago when I had a discussion with a developer. He tried to convince me that bathrooms in future should not have any windows. I think the Secretary must have heard of this. Some developers have tried not to fit any window in the bathroom. It is argued that lights can be turned on when it is dark and so people will not trip over while taking a bath. But what about air ventilation? How can there be no window in a bathroom? It turns out that this would make things simpler in construction as only a whole slab of concrete would be required. If there is a window-frame, things would be more complicated.

But all these really baffle me. If no windows are needed to be fitted to a bathroom, then the same thing can be done to toilets, kitchens and even sitting-rooms. Then an entire building may not need any windows. Strictly speaking, modern technology can enable enough air to come into a building and go out of it. But I think that a building like this is unfit for humans to live in. About this example which I have just cited, I think the Secretary must have heard of this before and this is not made up by me. There are really some developers who have thought about that because they want to make construction easier and faster, hence enabling them to make money quicker.

When we look at the way many commercial buildings are constructed these days — leaving aside the point raised by many Honourable colleagues earlier that glass screens are not environmentally-friendly — the greatest problem is that there is no law on this. Even if we do not talk about enacting laws — I know the Secretary will be unhappy whenever he hears about enacting laws — a lot of requirements are still imposed on buildings. The Buildings Ordinance, for example, prescribes some of these requirements. I recall that in the past — it is no longer true now, if I am wrong, Patrick LAU will certainly correct me — there used to be sunshine requirements on the height of a building. This means whether or not sunlight can shine on the street below. It seems now that people do not talk about this anymore.

During the 1990s when I was a Member of the legislature, I learnt that the Town Planning Board had once discussed the idea that buildings at the waterfront should have a wave-like restriction on their height. This would make the city look more attractive. In other words, there should never be a row of wall-like buildings, or put it bluntly, an ugly and monotonous row of concrete buildings blocking the view. Can a wave-like design be adopted or can buildings closer



to the sea be built lower while those in the middle be built taller and those at the very centre are the tallest? These are just common sense matters. But none of these are done in Hong Kong because it is the easiest thing to build blocks after blocks of buildings.

Is the Secretary really powerless to do anything? No, he can invoke the Buildings Ordinance, the relevant code of practice or guidelines and impose requirements. I think this is the fastest way to make the builders of private buildings think more about environmental protection.

Some Honourable colleagues have criticized the green balconies earlier. I have done that before and the Secretary knows about it. In October 2006 I had, put nicely, a heated and rational debate with the Secretary and Mrs Rita LAU NG Wai-lan in a meeting of a panel. Put bluntly, at that time I was very upset about the fact that developers had exploited green balconies to their advantage and included the area of green balconies in the flats they sold. I asked the Secretary to speed up the review but the Secretary responded by saying that the review was not going slowly. So if work can be done in the Buildings Ordinance or in the code of practice, things can certainly go faster.

All architects, engineers or surveyors know that there are comparisons of what is generally known as benchmark power demand for commercial premises. For premium commercial buildings like the IFC or others, there is a benchmark in the market on power demand for every square metre. However, since there are no incentives, private developers do not quite follow what the Government says. But it would be different if a large-scale survey can be undertaken and some benchmark is agreed upon and if the Government has set up some target on that. The best way would be persuading the stakeholders to comply. Failing that, stipulations can be made in the Buildings Ordinance or in the code of practice that power consumption for every square metre of commercial premises should be reduced yearly by a certain amount. This is actually a very sensible thing to do and it will help companies save on electricity consumption. So if we look at things seriously, there are lots of things the Secretary can do in government buildings. As for private buildings, even if no laws are enacted, there are also many things that can be done. The most crucial thing is whether or not we have the determination. I hope the Secretary can give us a good response when he speaks later.

Thank you, Madam President.

**MISS CHOY SO-YUK** (in Cantonese): President, the original motion urges that while promoting the urban development of Hong Kong, the Government should uphold the principle of sustainable development and formulate policies on encouraging developers to construct more green buildings. We very much support all this. In December 2005, when I moved the motion entitled "Conservation of energy", I already urged the Government to take the lead by making it mandatory for proposed government buildings to pass the energy efficiency assessment prior to construction in order to ensure that the designs, materials and facilities of such buildings meet the energy conservation requirements.

Besides, in order to increase the strength of green checking, we also proposed that the assessment criteria and even the final results of green checking should be publicized for reference of the public.

The green checklist we proposed covers many items, such as the use of renewable energy as far as possible; the construction of sewage recycling systems; the full-scale separation and collection of waste; the full-scale adoption of energy conservation equipment; the introduction of electricity demand-side management and the implementation of green roof projects. It is obvious that this checklist is very similar to the proposals set out in the motion today. Owing to the time constraint, I shall concentrate on giving the views of the DAB concerning energy conservation and noise abatement. In this connection, as long as the Government can formulate appropriate policies and measures, it can already achieve very great environmental results without investing huge resources and requiring the public to pay any high costs. *(Ringing of telephone)*  
I am sorry.

Energy conservation sounds easy, but its extensive implementation is no easy task. For example, glass towers of varying sizes are scattered all over Hong Kong, but how many of us can realize that all these chic and trendy buildings in fact waste huge amounts of electricity? Glass curtain walls are a poor insulator of heat and coldness. It is therefore always hot during summer and cold during winter inside these buildings. Worse still, since these buildings are enclosed and poor in air ventilation, it is necessary to switch on their electrical ventilating systems for prolonged periods. What is even more ridiculous is that since glass is used extensively in the outer walls of these buildings, the sunshine on them is extremely strong, so many offices are forced

to lower their window blinds and rely on electric lighting instead. For all these reasons, it is estimated that the power consumption of all such buildings may be four or five times that of energy efficient buildings.

What is so ironical is that in the 1998, the Government itself launched the "Energy Efficient Building Logo" scheme. In the past 10 years, registration certificates were issued to 735 buildings only. Poor responses aside, the interesting thing is that even glass towers were also issued certificates. This can show that only a very limited number of factors are considered under the scheme.

With a view to promoting energy efficient building designs, the DAB urges the Government to follow the examples of Japan and the European Union, making it mandatory for new building projects to comply with a set of energy efficiency indicators. Incidentally, I wish to mention that early this month, the Beijing Municipal Construction Committee and the Beijing Municipal Commission of Development and Reform jointly promulgated the Energy Efficient Building Development Plan of Beijing City for the Duration of the National Eleventh Five-year Plan. During the five years in question, all property developers in Beijing have to make energy efficiency commitments to owners in property sales contracts. In other words, if a property developer fails to obtain an energy efficient building logo, the handover and sale of the properties concerned will not be permitted.

President, another issue is noise nuisance. This is also an issue which, I hope, the Government can squarely address without any further delay. Even according to the most conservative estimation of the Government, as many as 1 million people are severely affected by road traffic noises every day.

In order to reduce the level of noise affecting buildings, all must start with building design, and noise control must be improved. For example, building orientations must be carefully selected, and there must be detailed planning on building materials, structures of doors and windows, designs of blinds and even air-conditioning systems, so as to achieve the best abatement effect. Besides, the extensive planting of trees with dense foliage will help reduce noise by some measure, especially in the case of low-floor units near carriageways. Of course, property developers may even reserve the lower floors of buildings as car parks or shopping arcades, so as to set residential units farther away from carriageways.

To sum up, there are many ways to reduce the level of noise affecting buildings. The fundamental question is how we can encourage property developers, who are concerned about profits, to actively implement the required measures. Therefore, the DAB advises that the Government must formulate appropriate policies. We maintain that the most effective measure is to require property developers to disclose the level of noise affecting each flat in their sales brochures for buyers' reference. At the same time, a noise rating system should be established for buildings. Only all this can yield immediate results. This practice can enhance the transparency of building projects, so that buyers can fully grasp the characteristics of the buildings concerned before making any decision. Actually, if we can peg noise levels with property prices, property developers will be encouraged to make more efforts to design and construct quieter flats.

President, I so submit.

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

**MR ALAN LEONG** (in Cantonese): President, practically all countries in the world now agree that every effort must be made to reduce the emission of greenhouse gases, so as to alleviate global warming. For example, Mr BLOOMBERG, Mayor of New York City, disclosed last year that his city planned to reduce its emission of greenhouse gases by 30% in the run-up to 2030, and he also announced more than 100 plans, including the introduction of energy efficient measures for municipal government buildings, schools and sewage treatment works as well as the greening of streets and various traffic improvement strategies. Sometime earlier, during their fact-finding visit in Tokyo, Members of this Council also gained an in-depth understanding of the city's "Green Building Plan" and its measures of reducing carbon dioxide emission.

Having looked at the international scene, we may turn our attention back to Hong Kong. Although the Co-ordination Group on Global Climate Change was established as early as 1991, we found that the last meeting of the group was actually held as long as six years ago. We can thus observe that the SAR Government's work of policy co-ordination to cope with global warming has actually come to a virtual standstill. With the intensifying crisis of global

warming nowadays, metropolises such as New York City and Tokyo have already formulated long-term and comprehensive plans, but our co-ordination mechanism has come to a standstill, not functioning. For this reason, it is of course difficult for us to provide any support in terms of urban development and land planning and formulate a strategy of sustainable development.

President, we hope that the urban development and planning of Hong Kong can keep abreast of the times, so that we can follow the world trend of energy conservation and combating global warming. It is absolutely necessary for the SAR Government to radically change its established mindset. Earlier on, this Council held repeated discussions on improving our urban planning. At the meeting on the 25th of last month, Secretary Michael SUEN remarked that low-density development will lead to less revenue. We cannot help feeling worried. Even today, when a climatic crisis is imminent, our Government still regards Treasury revenue as the most important or even the only consideration, thus making our urban construction lag far behind the concept of sustainable development.

As the Government is bent on maximizing land proceeds and the closed Town Planning Board (TPB) is controlled by the Government from its set-up to procedures, it is only natural that community planning has been according priority to monetary gains and environmental consideration is given almost the lowest ranking. The Government has been forced by social pressure in recent years to introduce certain environmental elements into its building policy, but due to the need for accommodating the demands of property developers, the closed TPB has time and again done disservice to society. The most notable and ironical examples are the cases of environmental balconies and hanging gardens mentioned by several Members earlier.

Environmental balconies and hanging gardens are actually the results of a policy under which the green facilities provided by property developers can be exempted from the computation of plot ratio. This policy has led to the phenomenon of "inflated saleable area". Besides, blocks and blocks of "screen-like buildings" have also turned many communities farther away from waterfronts into heat islands. As a result, what are originally meant to be environmental measures have achieved the opposite result of creating more environmental problems under a planning mechanism devoid of transparency and openness. Property developers may make profits, but the common masses are made to suffer.

President, to do away with such an imbalance, we must first reform the age-old urban planning mechanism, with a view to reducing the Government's dominance in the TPB, so that the whole planning mechanism can move closer to local communities and accommodate the voices of more professionals. As rightly pointed out by Dr KWOK Ka-ki in his amendment, non-government independent individuals should be entrusted with the task of leading the TPB and providing it with administrative support. This can, to a certain extent, serve as a check on the planning concept of maximizing land proceeds, thus ensuring that urban design will not be biased towards monetary gains all the time.

What is more, local communities should also be empowered to put forward their own concepts on sustainable land planning and development, instead of being made the passive targets of government consultation. We can remember that during his election campaign, the Chief Executive undertook to re-examine the Outline Zoning Plans of all districts. However, the Government has recently told us that the so-called consultation will again be based on the same old rules that have been adopted for decades. In other words, the public are once again requested to put forward technical submissions within the deadline following the unnoticeable publication of notices and plans.

Why is it impossible to let the people propose their own community planning concepts and then let the Government explore the possibility of implementation? The projects connected with Oil Street in North Point and also H15 for Wan Chai, for example, can aptly reflect that the people's wisdom is often more practical than that of the Government.

Improving the environment through urban planning is not only a matter of increasing concern in Hong Kong's civil society, but also an indispensable part of our fight against global warming. Hong Kong's urban design mechanism has long since been lagging behind the times. We must not be hindered by such a mechanism anymore. Rather, it is high time that we reformed the mechanism, so that we can formulate an integrated strategy that cuts across different policy areas to cope with the worsening environmental and ecological challenges that spare no one.

President, I so submit.

**DR RAYMOND HO:** Madam President, as Members of this Council may recall, we started discussing the subject of sustainable development in Hong

Kong in as early as 1998. Almost a decade has lapsed, Hong Kong is making little headway in our pursuit of sustainable development. But more and more screen-like buildings are cropping up on both sides of the Harbour which block both air ventilation of their neighbouring areas and obscure the ridgelines as well as the harbour view.

With the increasing evidence of a connection between imbalanced development and global warming, it is high time for Hong Kong to put into practice the sustainable development, with priority accorded to the development of both green towns and environmentally-friendly buildings.

Indeed, green new town projects have been proposed by the Government and have been discussed by the relevant panels of this Council. If I remember correctly, South East Kowloon, Kwun Tong, Hung Shui Kiu and Lam Tin were among those under consideration. It is most unfortunate that these proposals have eventually failed to get off the ground due to various reasons.

With the fact that our economy is right back on track and the Government is sitting on a fat public purse, it is the right time for the Government to revisit these proposals. In developing these new towns, the blunder of erecting screen-like housing blocks must be avoided. Instead, these new development areas should be zoned with buildings in stepped heights so as to ensure better lighting and ventilation. In as early as 2000, I moved a motion in this Council urging the Government to carry out a thorough review of the Buildings Ordinance. I proposed amongst other suggestions that the Government may offer incentives to property developers to encourage them to adopt designs and construction materials which are friendly to both the environment and maintenance. In a more flexible manner, the Government can also introduce other green features through issuing relevant codes of practice.

In order to reduce greenhouse gas emissions, vehicular traffic should be kept to a minimum in these new towns while the environmentally-friendly public transport should be promoted. It can be in the form of a shuttle system which provides feeder transport service to the main rail trunk line. To minimize people's reliance on vehicles of short distance travel and to promote walking, there must be a well-planned pedestrian network comprising fully pedestrianized streets, open space corridors, travellators, pedestrian links as well as mono-rails with supplementary footbridges/subways provided to, for instance, pedestrian links at podium level. This will provide a very efficient system for people to adopt and use.

It is worth noting that similar environmentally-friendly features can also be introduced in the urban areas. A promenade along the full length of both coastal lines of the Harbour is long overdue. People can walk to their destinations and enjoy the beautiful harbour view at the same time. Their walking trips would be more pleasurable if there were more green zones established along the way.

More and more emphasis is given to energy conservation and adoption of renewable energy nowadays in order to reduce greenhouse gas emissions. Again, I touched upon the subject when I moved a motion on "developing renewable energy resources" in 2001. With the rapid progress in the field in the past decade, many new technologies and practices are mature enough to be incorporated into the design of new development areas, such as district cooling systems for air-conditioning and solar energy applications. Many other new alternatives are worth studying.

With worsening of our air quality, there is an urgency for the Government to take on a greener approach in our future development. Developing new green towns is a plausible option. In a smaller scale, the Government has to take the lead in adopting relevant green designs and applications into its own projects. These initiatives will surely set good examples and standards for other developments in the private sectors.

Adherence to our present imbalanced urban development is simply not sustainable, otherwise, we will lose out to our neighbouring economies which implement sustainable development.

With these remarks, Madam President, I so submit. Thank you.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, what is necessary is to rectify names. If names be not correct, language is not in accordance with the truth of things. The fad now is for people to say that before one can be given something, one must have knowledge of certain other things. Mr MA Lik has taught Hong Kong people that they must agree that the 4 June Massacre was righteous before they can be described as patriotic, before there can be universal suffrage.

This is also the case with the motion topic today. Prof Patrick LAU has put forward a motion topic that resembles an examination question for secondary



students. We are free to say whatever we like because in this legislature, it is difficult to: (1) adopt a clear stance; and (2) do anything for the benefit of the majority of Hong Kong people. If Members just want to cast their votes and have them put down on record, then they must realize that in order to pass the motion, they must make the whole thing very ambiguous. Actually, all is very simple. In this Chamber, we often discuss such issues as reclamation, the Queen's Pier and "screen-like buildings". There is endless bickering indeed. This Government is actually trying to convince us that Hong Kong will have to starve if the policy of "Three H's" is not adopted. If Hong Kong does not want to starve, it must accept the Government's policy of "Three H's", that is, the policy of "high property prices", "high rents" and "high land prices". This is of course the axis for everything else.

Donald TSANG talked about a blue sky and so and so during his election campaign. Buddy, I have already mentioned this before. The website has now been destroyed — it has disappeared. In other words, it will no longer be found in history. When we click into the website now, we can no longer find out what he actually said on all these topics we are now discussing. Today, he has assigned Secretary Michael SUEN to say just the opposite thing here — this is indeed a superb tactic, as superb as Beijing's spraying of green paint on all grasses when applying for the right to host the Olympic Games. There was a vision in Mr TSANG's blue sky plan. He frequently criticizes Mr Alan LEONG for having visions but not the ability to realize them. What about his own vision, buddy? He is really superb. Since he cannot make it, he has eradicated the whole vision. That way, he does not need to do anything.

We can see that "screen-like buildings" all tower like tombstones, as if in mourning of this city. "Screen-like buildings" are found in Tai Kok Tsui and my constituency, Tai Wai. Those in Tai Wai were constructed by the organizations owned by Mr LI Ka-shing (I guess Secretary Michael SUEN and Mr LI have not clubbed together to buy a horse). All such buildings are alike, and no explanation has ever been offered. The Government has only claimed that it has not done so. It simply says that it is the decision of the Town Planning Board (TPB), so questions must be directed at it.

But the TPB is controlled by the Government, buddy. All the government officials serving as members of public organizations such as the various "Authorities", the MTRCL and the KCRC have not acted for Hong Kong people as government representatives. As government representatives, they

just want to do things that are against the interests of Hong Kong people but beneficial to a handful of consortia. I once visited the TPB to inspect some documents. My Goodness! There were seven whole volumes. I also invited the press to join me in the inspection. All the documents were written in English. Prof Patrick LAU's standard of English is of course very high. But I do not know any English, buddy. To many Hong Kong people, it makes no difference whether consultation is conducted in English or Spanish. They are both foreign languages anyway. So, how can we know what is said? The Government invites people to inspect the relevant documents. There are two problems. First, there is the problem of language barrier. Second, there is the problem of time.

Secretary, even if I want to treat you to dinner tonight, you may not have any time, right? The Government announced three days ago that it would conduct consultation, consultation in Spanish. To many Hong Kong people, consultation in English is no different from consultation in Spanish, because in both cases, they will not understand. Such a consultation approach is indeed very sinful because it in a way asks people to tell lies, white lies. Afterwards, it can claim that it has conducted consultation, saying, "Buddy, very sorry, but the Government has already conducted consultation."

Secretary, what are your subordinates doing in the TPB? Yesterday, when I arrived at the scene, I tried in vain to enter the meeting venue. Even if the residents in Lee Tung Street wanted to express their views, they could not do so. When the Government formulates new planning for certain streets, the local residents cannot even voice their views. This is similar to what happens to a person who wants to buy a piece of meat in a supermarket. A supermarket assistant tells me, "Yes, you may do so. But in the meantime, please go home first." The supermarket then gives him a product manual, asking him to read it first and telling him that the meat will be delivered to him a month later. Buddy, the meat will surely have rotten a month later. What is the origin of a system under which the one who eats the meat is forbidden to say anything and the meat vendor can say whatever he likes? Let me tell Members the answer. Just read Annex I to the Basic Law on the Election Committee, and we will know the answer. The Election Committee comprises four categories of members. There are 400 members from the industrial, commercial and financial sectors and the professions. The rest are Hong Kong Deputies to the National People's Congress, representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, Members of the Legislative Council and representatives of district-based organizations (These

representatives are not from District Councils but from non-elected organizations formed by the Government).

Honourable Members, once Donald TSANG reads the Basic Law, his hands will tremble and he will drop the booklet, because he was elected by these 800 people. A blue sky is for all these people only. All problems are political. Must the Government have any political platform? First, this government does not have any. Even if there used to be one, it has already been eradicated after the election. This means that there is basically no political platform. Since Mr Donald TSANG does not belong to any political party, buddy, he does not need to read any party platform, because it has long since been eradicated. Mr SIN Chung-kai, you will not see his political platform anymore on the Internet. Therefore, he does not need to make any announcement, does not need to do any work.

It seems that Secretary Michael SUEN is not speaking on behalf of Mr TSANG in the Legislative Council today — we do not know Mr TSANG's present whereabouts anyway. The Secretary is here to tell us an opposite concept. He says, "No, if we do not do so, things will not be alright". Buddy, can he issue a military order on "screen-like buildings"? Can he make such a military order? He says "no". He does not dare to do so. He only says that there will be blue sky. I cannot help asking the Secretary, "How can you make the sky blue?" He will reply, "I do not know." This is similar to what happened when Beijing was applying for the right to host the Olympic Games. People asked, "Will there be any green grasses?" They answered, "There will be green grasses no matter what." People said, "They must be real grasses." They answered, "Yes. You will find out when the time comes." In the end, they painted everything green, grass-green. In this way, they succeeded in applying for the hosting right. Our Government is doing exactly the same thing now. During the election campaign, it painted a blue sky. But that was all.

Secretary Michael SUEN, you must answer this question of ours today: Does the Government have any concrete policy? The Government's existing policy is severely criticized for ignoring the environment, ignoring history and ignoring environmental protection. What other policy does it have? Secretary Dr York CHOW has also been questioned on his children policy today. Honourable Members, Secretary Michael SUEN has just mailed to me a document which is entirely blank, entirely blank on policies, buddy. The policy document Mr SUEN has mailed to us is entirely blank. When there is no

policy, what else can there be? The absence of a policy means that there is no concrete plan. Therefore, this is actually a political problem. A government elected by a coterie election will never protect the environment ..... will certainly funnel benefits to large property developers (*the buzzer sounded*) .....

**DR FERNANDO CHEUNG** (in Cantonese): President, I rise to speak in support of Prof Patrick LAU's original motion and Dr KWOK Ka-ki's amendment. I am very grateful to Prof Patrick LAU for proposing a motion of such dimensions, one which covers the flooding and famine caused by global warming, the development of our city as a whole and the policy on environmentally-friendly buildings. Dr KWOK Ka-ki has also raised the problem of the Town Planning Board (TPB).

President, although Hong Kong is a tiny place, the volumes of waste that we generate together are alarming. The municipal solid waste dumped at our landfills amounts to 6.5 million tons a year. And, the various articles we dispose of, that is, disposable articles, weigh more than 20 million tons a year. This is not to speak of the waste generated by the overuse of plastic bags and excessive packaging. It is estimated that our three existing landfills will reach capacity within five to nine years.

Although environmentalism has gradually become a social trend in recent years, it seems that environmental protection has not yet become part of our life. The volume of municipal solid waste last year was still slightly greater than that of the year before last, indirectly showing that our waste recovery work has not been very effective. As early as 1998, the Government already started to place waste separation bins of three different colours (recovery bins) all over Hong Kong, in the hope of increasing the rate of waste recovery. But the effort has not been very effective so far.

Several years ago, many women and grass-roots organizations started to form experimental co-operatives for the operation of waste recovery teams. Through the mobilization of women at the community level, they have managed to establish a more flexible waste separation and recovery system. The emphasis of these recovery teams is teamwork, and women are allowed to take care of their families at the same time. In the course of promoting green living, women can enhance their own community networks. While earning money, they can also contribute to the development of local community economies and increase their sense of belonging to their communities.

In the past, many waste recovery merchants were reluctant to buy the plastic bottles collected by the brown recovery bins in housing estates because such bottles occupied more space and were not as valuable as scrap paper and aluminum cans. The Hong Kong Women Workers' Association therefore trained up a group of women and formed the Women's Plastic Bottle Co-operative. The Co-operative now operates mobile recovery stands in Kwun Tong. In co-operation with the Environmental Protection Department, it also runs a recovery centre in the district, where different kinds of plastic bottles are separated, crushed and compressed. Since this process can reduce the storage space required for plastic bottles by three quarters, processed bottles can be transported to recovery merchants for recycling.

Besides collecting plastic bottles, these recovery stands also assist in the recovery of other kinds of waste, such as plastic bags, metal cans and used clothing. In 2004-2005 alone, the Co-operative recovered waste from close to 100 000 people, and the sale of the recovered materials yielded an amount of \$66,000.

The Hong Kong People's Council on Housing Policy also operates a recovery centre in Kwai Shing East Estate. Residents will first separate the different kinds of plastic articles at home and then give them to the recovery centre in exchange for gifts. After crushing, these plastic articles can be sold to recovery merchants for recycling.

Waste recovery aside, many organizations even organize women in the districts into household cleaning teams which use natural cleaning agents in their provision of household cleaning services. For example, in the case of the environmental household cleaning teams under the Hong Kong Women Workers' Association, the women team members will bring along environmentally-friendly cleaning agents such as soda powder, coarse salt, toothpaste and lime when cleaning the homes of their clients. And, the Women's Green Living Co-operative and Women's Green Cleaning Teams under the Hong Kong Federation of Women's Centres also provide similar services.

All these people's endeavours aim to combine environmentalism with the provision of employment, and they have yielded very good results. If the Government wants to assist grass-roots people in securing employment through the promotion of social enterprises, it should really provide such organizations with greater support. For example, the Co-operative Societies Ordinance is

already outdated. Its requirement on the number of members and other outdated provisions have plunged co-operatives into numerous operational difficulties. Many government departments are not even sure about the nature of co-operatives. Co-operatives thus face many difficulties in leasing premises from the Housing Department (HD) or licence application. To the aforesaid recovery teams operating in housing estates, the identification of suitable venues is of paramount importance. The HD should provide them with vacant premises at low rents. The Government should also consider the possibility of establishing a greater number of waste recovery teams in housing estates and assisting them in expanding into private housing estates.

President, what I have been discussing are all very practical issues instead of any grand visions. Policy-wise, there must be support in terms of policy formulation and implementation. The need for the TPB to be transparent and independent, as advocated by Dr KWOK Ka-ki, is in fact extremely important. Just yesterday, the TPB endorsed a redevelopment plan submitted by the Urban Renewal Authority (URA). The plan covers H16 for Wan Chai, that is, the plan for Lee Tung Street (also called the "Wedding Card Street"). Under this plan, some old tenement blocks will be demolished, so it is actually necessary to introduce greater transparency to the whole process. The law admittedly provides that the TPB should conduct open meetings, but what this really means is just live television broadcast. When a meeting comes to the deliberation and voting parts, the TPB will stop the live television broadcast. This arrangement is basically absurd.

We can even observe that in the case of the "Blue House", a conservation project of the URA, although the URA has already endorsed a conservation plan, the residents in the "Blue House" are not allowed to continue to live there. All this is directly related to conservation. The TPB looks like an autonomous body, but in reality, it cannot operate independently. Its secretariat and District Planning Officers will resort to various guidelines and technical documents to make the TPB follow the Government's direction. And, even the Ex-officio Chairman is also a government official. I therefore fully support Dr KWOK Ka-ki's amendment. Thank you, President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon Prof Patrick LAU to speak on the amendment. He has up to five minutes.

**PROF PATRICK LAU** (in Cantonese): President, although in principle I do not object to Dr KWOK Ka-ki's proposed amendment of appointing a non-government official as the Chairman of the Town Planning Board (TPB), I wish to point out that Members may have misunderstood the way the entire TPB operates.

In fact, just as Dr Fernando CHEUNG has said, the TPB has already made public part of its operation as required by the monitoring system established by the Legislative Council. The change has been introduced for just a short time and is still running. The question is, many people when joining the TPB — I myself have been its member for eight years — are full of aspirations, hoping that they can play a part in planning Hong Kong. This is, in fact, not the case. The crux is that we have to understand that behind the TPB, there is the Planning Department (PD) which is in charge of drawing up the outline zoning plans and hammering out the entire development concept of Hong Kong. That is why I propose today a change in the policy. If the Government cannot take forward this policy, the PD will not be able to draw up zoning plans for approval by the TPB.

A lot has been said in this respect just now such as on the source of the refuse, but we need to understand the logic behind it. In this respect, we have to understand whether the TPB truly possesses such huge power? Members may well know that there are 30 members on the TPB, and all of them are appointed by the Chief Executive. If a change is to be made, then, should the Chief Executive require them to pass an examination? Mr LEUNG Kwok-hung commented just now that the motion is at secondary school students' level, but this is, in fact, very complicated. If the Chief Executive can appoint people from different sectors of society into the TPB, it can become an epitome of society, and by then I hope it can do a better job.

As to whether an independent secretariat should be set up, we certainly can make use of this secretariat to screen plans submitted by the PD. This is feasible. However, the crux of the question is, just as I have proposed in the motion today, that this will have an impact on the government policy. The situation is not like what Mr LEUNG Kwok-hung has commented, that there was no need for further discussion, that it was all the Government's fault. I beg to differ on this point.

Many Members have put forth just now many good suggestions, which have enriched the central thinking of the motion. Some Members have asked whether the development of Hong Kong has to be purely money-oriented. I hold that we need to strike a balance. Planning and development certainly need money, but if we only care about money, it is not the policy the motion today advocates. I hope the Government will spare another thought on this.

I echo some Members in saying that lifestyle is very important. In order to change government policies, we have to change our lifestyle by recognizing the importance of environmental protection. Why is global temperature affected? Why do buildings have so much emission? All these are subjects for study. We thus have to make an extra effort on education. Members have also raised the importance of special characteristics. In fact, on the environment front, extra efforts have to be made at a microscopic level.

I hope this motion can pool Members' efforts together in expediting the work of sustainable development, improving our living environment and building a beautiful city that is sustainable for generations and with vitality, and in which economic development is initiated by the environment. On this front, I also hope that capital and talents can be attracted here and thereby further boost the competitiveness of Hong Kong.

I so submit. Thank you, President.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): President, sustainable development is one of the important policies and principles upheld by the SAR Government in governance. Sustainable development means that while pursuing material affluence and improvements to our living, we should reduce pollution and wastage of resources; and, while we seek to satisfy our various needs and aspirations, we should avoid harming the well-being of our children, reduce the environmental effects on our neighbouring places and join hands to protect our common resources. To achieve these aims, there must be the total dedication of society and every citizen, the support of industries and appropriate government promotion. Everybody must pitch in before there can be any sustainable development.

In May 2005, the Government published Hong Kong's first ever sustainable development strategy. The measures put forward include the continued implementation and regular review of the existing guidelines on



sustainable urban design and the conduct of studies on formulating a strategy on sustainable building designs.

Land resources in Hong Kong are scarce. To ensure the sustainable development of our society, we must draw up a satisfactory town planning strategy that can guide and appropriately regulate the development and uses of land, so as to provide a quality living environment and promote economic development. This is precisely the aim of our town planning.

The Town Planning Board (TPB) is responsible for formulating guidelines on the basis of the Hong Kong Planning Standards and Guidelines (HKPSG) and for preparing statutory plans on land uses, with a view to promoting community hygiene and safety and residents' convenience and general well-being.

When I replied to Mr WONG Kwok-hing's motion two weeks ago, I already mentioned that the objective of the HKPSG is to provide basic guidelines on urban planning and design. We need to strike a balance between social and economic development on the one hand and the impacts of such development on the urban environment on the other. At the same time, the HKPSG also provides development projects with guidelines on scale, density, site requirements and support facilities, environmental planning, conservation of natural landscape and ecology as well as preservation of cultural heritage and cityscape, with a view to upgrading Hong Kong people's quality of living.

The Government will from time to time revise and review the HKPSG in response to policy adjustments and ever-changing public aspirations, so as to meet the prevailing needs of society. Since 2002, the authorities have completed 32 review items which cover the planning standards and guidelines for different areas. New guidelines have also been introduced. Air ventilation guidelines, for example, were introduced last year to provide development projects with guidance on air ventilation, with a view to addressing people's deep concern about the "wall effect" and air ventilation in recent years.

Apart from updating the HKPSG, we will also review, amend and update existing Outline Zoning Plans and formulate new ones under the statutory procedures set out in the Town Planning Ordinance, and the areas covered include the development parameters of designated uses and other related aspects.

Dr KWOK Ka-ki's amendment proposes to reform the composition and secretariat of the TPB. I totally disagree to his proposal. As a matter of fact,

the operation of the TPB is highly transparent. Except for the deliberation parts and some special circumstances, all meetings of the TPB are open to the public. And, all minutes of meeting (including those on the deliberation parts) are uploaded onto the website of the TPB for public inspection. These measures and the public monitoring mechanism can ensure a high degree of transparency for the planning mechanism.

As for the role of government officials in the TPB, I have offered an explanation several times, and let me do so once again now. The bulk of the TPB's work involves the approval of private development projects, which is why its Chairman must not have any conflicts of interests. But at the same time, he must have the relevant experience — this is rather difficult — and be able to participate in planning work on a continuous basis. Since the government official responsible for the policy of planning and lands can meet the very stringent requirements mentioned above, we think that it is appropriate for him to serve as the Chairman of the TPB. Furthermore, since the Planning Department (PD) is well-versed in the Town Planning Ordinance and the relevant procedures, we also think that it is also appropriate for it to provide professional and technical assistance to the TPB from the perspectives of both practical efficiency and resource utilization.

To encourage and promote the construction of green buildings is another aspect of the Government's sustainable development policy. In the subsidiary legislation of the existing Buildings Ordinance, the building design and construction standards for indoor lighting and ventilation as well as refuse collection and materials recovery rooms are already laid down, with a view to providing residents with convenient facilities and improving their living environment.

In order to encourage the design and construction of green buildings, the Buildings Department, in conjunction with the PD and the Lands Department, has issued two sets of Joint Practice Note. Through the exemption of green building features from the calculation of gross floor area, we encourage the introduction of various green features to new building projects, including environmental balconies, hanging gardens and non-structural prefabricated external walls. Apart from promoting greening and environmental protection, these features can also reduce energy consumption and construction and demolition waste, thus creating a more comfortable living environment for residents.

In order to promote and encourage the construction of green buildings and provide guidelines on the required designs, the Buildings Department has commissioned a consultancy study on the establishment of a scheme on comprehensive assessment of the environmental performance of buildings. The most notable feature of the scheme is an environmental building logo system under which commendation is made of buildings with good environmental performance in their planning, design, construction and management. The objective is to make the best use of market forces as a means of encouraging developers to achieve the best environmental performance and rating for the buildings they construct.

The assessment scheme will take account of various environmental performance factors such as quality of indoor environment, building management, efficacy of facilities, resource and energy utilization, environmental impacts of buildings, waste management and the relationship between a building and the surrounding open space and green zones. The coverage is very extensive. And, such assessment will also span the entire life cycle of a building, covering its planning, design, construction, demolition and even the conditions after its occupation.

The Government has always set a good example. It has been actively adopting sustainable building designs in public construction projects, so as to take the lead in the endeavour. Our aim is to achieve congruence between buildings and their surrounding environments, utilize land effectively, conserve natural resources, save energy and create a green environment. To achieve this aim, we have implemented the following measures.

In the course of planning new buildings and improving existing government buildings, we will try as much as possible to achieve congruence with the natural landscape and environment by minimizing land formation; by arranging the orientations of buildings, we will try to make the best of natural lighting and air ventilation and preserve the original vistas and refrain from felling any trees by all means.

As for greening, we will enhance the green and landscape gardening designs of government buildings. We will tie in closely with Greening Master Plans and increase the green space in existing government buildings as much as possible.

Regarding the specifications of materials, we have introduced a number of new requirements that meet the principles of environmentalism and sustainable development. For example, we now require the timber we purchase to come from recognized renewal woodlands, and we have been using recycled pebbles.

Regarding energy conservation, we have been persistently improving the designs of new government buildings, and we have also been installing energy-efficient facilities for all of them. Some examples are energy-efficient fluorescent tubes and energy-efficient air-conditioning equipment. We have even taken the lead to adopt renewable energy in government buildings, some examples being solar electricity systems and solar water heaters. The Sheung Shui Slaughterhouse, the Hong Kong Science Park and the new headquarters of the Electrical and Mechanical Services Department are good examples of buildings fitted with energy-efficient facilities on a large scale.

In respect of public-sector housing, the Hong Kong Housing Authority has formulated the "Sustainable Construction Strategy" and other related work objectives. Advanced technologies of sustainable construction and environmental protection relating to design, materials selection, construction, use and demolition have been adopted. For example, green fittings of buildings have been adopted — the trial installation of solar street lights; greening enhancement in the form of green roofs and vertical greening at selected buildings; the use of prefabricated components and the reduction of construction materials and waste. We also encourage measures such as source separation of waste at home, the adoption of a construction waste index and an incremental approach to demolition, with a view to reducing and appropriately handling the construction waste generated by public housing.

We have proactively adopted various measures to promote sustainable development. However, some of the topics mentioned in the motion, such as climate change and global warming, are regional or even global issues that cannot possibly be tackled by the SAR Government and the various sectors of Hong Kong alone. In the future, we will continue to conduct studies and reviews and seek to perfect our town planning system and construction monitoring mechanism. We will also work with the various social sectors to build a quality sustainable and green city.

Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Dr KWOK Ka-ki to Prof Patrick LAU's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHENG rose to claim a division.

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

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

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

Functional Constituencies:

Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Prof Patrick LAU abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Mr Alan LEONG and Mr Albert CHENG voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LAU Kong-wah and Mr TAM Yiu-chung voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, six were in favour of the amendment, 15 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 15 were present, 10 were in favour of the amendment and four against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Prof Patrick LAU, you may now reply. You have up to 10 seconds only.

**PROF PATRICK LAU** (in Cantonese): I thank colleagues for actively sharing their views and enhancing the importance of this motion. I hope the Government will implement this policy with sincerity and vigour. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Prof Patrick LAU be passed.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Second motion: Safeguarding the safety of live and fresh food. I now call upon Mr TAM Yiu-chung to speak and move his motion.

### **SAFEGUARDING THE SAFETY OF LIVE AND FRESH FOOD**

**MR TAM YIU-CHUNG** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

The safety of live and fresh food is fundamental to protecting the lives and health of the people. But in recent years, poultry eggs, fresh fish and even vegetables and fruits in Hong Kong have been successively tested to have contained harmful substances, thus arousing concern among the public about the safety of food. Housewives are worried whenever they buy food in the market, not knowing what to buy home, for they fear that the food they bought would do harm to the health of their family. Today, on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), I have proposed this motion on "Safeguarding the safety of live and fresh food" for debate to reflect again the grave concern among the public about food safety and public health. On the other hand, the DAB hopes to urge the Government of the Hong Kong Special Administrative Region (SAR) through this motion to step up inspection and quarantine of imported food to complement the enhanced safety control measures taken by the Mainland recently on live and fresh food supplied to Hong Kong, thereby ensuring that food available for sale in the market is safe and harmless.

After incidents about the presence of malachite green in freshwater fish and Sudan dye in poultry eggs that occurred last year, the Mainland has

continuously tightened the control on live and fresh food supplied to Hong Kong, and Premier WEN Jiabao also said through the media that the utmost effort had to be made to safeguard the safety of food supplied to Hong Kong, showing that the Central Government is very concerned about the safety of food consumed by Hong Kong people. With regard to freshwater fish and poultry eggs supplied by the Mainland to Hong Kong, measures such as a listing regime, the health certificate requirement and labelling of food origins have already been implemented. More recently, Guangdong Province has also imposed lead-seal control on vessels to address the problem of the mixing of smuggled fish with quarantined ones.

Recently, concern has again been aroused among the public over the problem of contaminated vegetables. As we all know, mainland vegetables are supplied to Hong Kong by registered farms, but there are still inadequacies in this arrangement. Firstly, the system of registered farms is applicable only to leafy vegetables such as flowering Chinese cabbage, spinach, and so on. But rhizomes, such as turnip and winter melon, or "hard vegetables" as commonly called by the trade, are not required to be supplied by registered farms or quarantined before export. In other words, no preventive measure is in place to assure that these "hard vegetables" are safe for consumption. Secondly, given the lack of effective management and control of the transportation and export of hard vegetables supplied to Hong Kong, some unscrupulous businessman, when transporting hard vegetables to Hong Kong, will mix unquarantined leafy vegetables with the hard vegetables on the vehicles. Thirdly, Hong Kong is also a transit point for the Mainland to transport vegetables produced by non-registered farms to other places but as the SAR Government has failed to trace the destinations of these vegetables in transit after they have entered Hong Kong, some unscrupulous merchants will retain these vegetables which may not be up to standard for sale in Hong Kong. This shows obvious loopholes in the safety of vegetables consumed in Hong Kong. To address these problems, the State General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) ordered early this year further regulation of the safety of vegetables supplied to Hong Kong by:

- (1) Stipulating that all vegetables, leafy or non-leafy, must come from listed farms;
- (2) Enhancing management of vegetable processing plants and adopting the three-in-one management model of "enterprise + base + standardization";



- (3) Implementing label identification and lead-seal control; information on vegetable farm or processing plant and information on the product must be indicated on the packing of the product to facilitate identification by consumers and tracing of problem vegetables. Trucks carrying quarantined vegetables must be lead-sealed with the seal number printed on the certificate of inspection for export goods;
- (4) Stipulating that vegetables entering Hong Kong in transit to other countries or regions must be stored and transported in freezer containers with the port of despatch and port of destination clearly written on the certificate to prevent such vegetables from entering Hong Kong;
- (5) Adopting speedy screening and instrumental analysis methods in compliance with the health standards in Hong Kong and Macao to conduct surveillance and inspections;
- (6) Enhancing the development of a system of corporate integrity; and
- (7) Imposing heavy punishment: Suspension of export and cancellation of the status of a listed or registered farm may be enforced for cases of pesticide residues exceeding the prescribed limit or collecting vegetables from farms other than the listed farms supplying inspected and quarantined vegetables.

To better understand the new measures to regulate the safety of vegetables supplied to Hong Kong, parliamentary assembly members and executive members of the DAB and the Federation of Trade Unions paid two visits to Shenzhen over the last two weeks and met with the Shenzhen Entry-Exit Inspection and Quarantine Bureau which is exclusively responsible for managing the supply of hard vegetables to Hong Kong. We also visited the new vegetable processing and distribution centre in Nanshan, Shenzhen. According to the briefing given by the Shenzhen Entry-Exit Inspection and Quarantine Bureau, the majority of non-leafy vegetables supplied to Hong Kong in the past had come from the Buji Agricultural Product Wholesale Market, but their origins were not traceable. The Nanshan centre for processing and distribution of vegetables to Hong Kong was hence established according to the stipulations made by the AQSIQ. All hard vegetables supplied to Hong Kong must come from listed farms, and vegetable traders can ship their vegetables to Hong Kong only after

centralized inspection conducted by the centre. To prevent unquarantined vegetables from being passed off as quarantined vegetables, the centre has specified vegetable loading points. All cross-boundary trucks must be empty when entering these loading points to ensure that all hard vegetables loaded and despatched are quarantined. On the other hand, to ensure sufficient supply of vegetables to Hong Kong, the Shenzhen Entry-Exit Inspection and Quarantine Bureau has entered into supply agreements with a number of major sources of vegetables, including Hunan, Yunan, Henan and Sichuan, and imposed source control on the safety of vegetables supplied to Hong Kong through the quarantine authorities there.

Mainland vegetables supplied to Hong Kong can already be controlled at source. Through the regulation of vegetable processing plants and implementation of label identification and lead-seal control, the relevant mainland authorities can now trace the sources of food and prevent unquarantined vegetables from being mixed with quarantined vegetables during the course of shipment. As Hong Kong is importing point of the vegetables, there are more reasons for the local food safety departments to step up food control measures, with a view to protecting public health.

However, according to an opinion survey conducted by the DAB recently, 60% of the interviewees rated the Government's performance in ensuring food safety as "Pass" only, 50% of the interviewees were of the view that after the establishment of the Centre for Food Safety (CFS), the standard of food safety remained more or less the same as in the past, and 30% of the interviewees even considered that there had been a retrogression in the food safety standard. From this we can see that the previous incidents of oil fish, contaminated vegetables, and so on, are but a revelation of inadequacies in the Government's monitoring system and in the legislation, and this has given the public the impression that the work of the CFS has not been effective enough as to make a significant difference from the past. The DAB's survey also indicated that although 50% of the people are aware of the new measures taken by the Mainland to regulate vegetables supplied to Hong Kong, most people do not have the confidence that the new measures can achieve the desired results because they think that the quarantine measures for imported food in Hong Kong may not be able to catch up and no solution has been identified to address the problem of smuggled food.

It has been the practice of the SAR Government to decide on the level of safety control according to the risk of the food concerned. For example, live

chickens and live pigs are rated as high-risk food items and their regulation is most stringent. Apart from the requirement that they must come from registered farms, they must be isolated for quarantine at their origins before they are exported, and they are subject to an additional sample test on their arrival in Hong Kong. They will be delivered to specified wholesale markets or slaughterhouses before they are supplied to retail points. The relevant government departments can trace their sources and destinations and impose stringent quarantine requirements on these food items, and they have the power to reject application for their import. On the contrary, for some food items which the Government considers to be of a low risk, such as vegetables, aquatic products, poultry eggs, and so on, there is no legislation which specifically imposes regulation on them. They are not required to be quarantined on importation, and nothing has been done to trace their destinations after entry into the territory, and all that we rely on is tests conducted on samples taken in the market. But even if they are tested to have contained harmful substances, mandatory suspension of sale and recall of the food are not possible under the existing law. When it comes to the tracing of the sources of food, the relevant work can only achieve half the result with twice the effort due to the fact that sales records are not properly kept and a label identification system is lacking. Almost all of the many major food safety incidents that occurred recently involved food items rated by the Government as low-risk. This reflects that the existing legislation, regulatory regime and food safety standards can no longer keep abreast of the needs of the public as well as the development of the agricultural and fishery industries and food processing techniques. For this reason, fundamental reforms are warranted.

The most effective process of food safety control should be one from "farm to table", which Mr WONG Yung-kan has repeatedly stressed. Hong Kong is a place where food is mostly imported. So, apart from relying on control and surveillance measures in the food supplying regions, the SAR Government must play a more important role in imposing control at source. With regard to mainland food supplied to Hong Kong, the SAR Government should foster co-operation with the mainland quarantine and inspection authorities and give advice on the requirements in respect of the management of various types of registered farms supplying food to Hong Kong, and also conduct discussions on the items of food to be quarantined and the standards or methods of quarantine, with a view to forging a consensus. Meanwhile, the labelling of food origins and lead-seal control must be implemented stringently on live and fresh food supplied to Hong Kong, in order to keep track of the "whereabouts" of the food.

On the other hand, the SAR Government must improve the legislative framework for a permission system for imported food by, among other things, stipulating that food must be imported at specified border checkpoints or ferry terminals where the Government will check the relevant information and labels of origins and carry out quarantine work, and the food will subsequently be delivered to specified wholesale markets for distribution on meeting the requirements. All food importers are required to register with the relevant departments and maintain records of sales to facilitate tracing of the products. Once an importer is found to have breached the rules by importing food from non-listed or non-registered farms, their registration can be revoked and their operation will hence be banned. At the wholesale and retail levels, the Government must step up inspection and formulate the statutory requirements for food recall, so as to enable the Government to handle food safety crises efficiently and prevent the entry of harmful foods into the market. It is only when a full set of measures is in place to impose source control and a market access system introduced for regulation purposes that Hong Kong can effectively upgrade the food safety standards and provide full protection to public health.

With these remarks, I beg to move. Thank you, President.

**Mr TAM Yiu-chung moved the following motion: (Translation)**

"That, as the mainland Government has, with effect from 1 April this year, strengthened its inspection and quarantine management system for vegetables supplied to Hong Kong, including designating supply farms, implementing label identification and lead-seal control, and regularizing certification and voucher management, etc, and such requirements will be extended to fruits and melons on 1 July and 1 October respectively; furthermore, quarantine and seal identification measures for vessels carrying freshwater fish from Guangdong Province to Hong Kong have also been enforced since 1 May, so as to eradicate the smuggling of fish into Hong Kong; however, the Hong Kong SAR Government has not yet made any complementary import quarantine arrangements, nor has it publicized the mainland Government's new regulations to the public, hence making it possible for unscrupulous traders to exploit Hong Kong's import quarantine loopholes and bring unquarantined live and fresh food into the territory for sale in the market, thereby endangering the public's health, this Council urges the Government to expeditiously adopt measures to complement the Mainland's new management regulations for food supplied to Hong Kong, and fully safeguard the safety standards of live and fresh food in the territory, including:

- (a) enacting a food safety law to bring live and fresh food such as vegetables and fruits, aquatic products and poultry eggs, etc, into the regulatory ambit, prescribing relevant food safety standards and enforcing import quarantine at border control points, so as to ensure the safety of imported live and fresh food;
- (b) implementing a food importer registration scheme and requiring food importers to keep their import and sales records, so as to enhance the enforcement authorities' ability to trace the sources and destinations of food;
- (c) disseminating information about the new regulations promulgated by the mainland Government and the list of designated food supply bases to the trade, and uploading such information onto the Government's website, so as to enhance the awareness of the trade and the public; and
- (d) strengthening liaison with the local trade to assess the impact of the new regulatory measures implemented by the Mainland and Hong Kong on the operations of the trade, and assisting the trade in making adaptation;

besides, the Government should also assist in improving the mode of operation of local agricultural and breeding farms, so as to increase the supplies of safe and high quality local agricultural and fishery products."

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

**PRESIDENT** (in Cantonese): Mr Vincent FANG and Mr Fred LI will move amendments to this motion respectively. Mr Tommy CHEUNG will move an amendment to Mr Fred LI's amendment. The motion and the amendments will now be debated together in a joint debate.

I will call upon Mr Vincent FANG to speak first, to be followed by Mr Fred LI and Mr Tommy CHEUNG; but no amendments are to be moved at this stage.

**MR VINCENT FANG** (in Cantonese): Madam President, live and fresh food generally refers to the following five categories of food, namely live poultry, meat, eggs, fruits and vegetables. It is true that in recent years food safety problems have frequently occurred with these categories of food. In a recent example, a prohibited substance, Sudan dye, was found in a rice dumpling yesterday. More than 90% of the live and fresh food consumed in Hong Kong is imported, of which 90% is imported from the Mainland. In order to effectively safeguard food safety of live and fresh food sold in the Hong Kong market, we have to understand why there was no such problem in the past and why there are so many problems nowadays.

The majority of the wholesalers working in these five categories of food industry have been running their respective businesses for several decades now. According to them, the primary reason for these problems is the opening up of the right of exporting mainland food. The proliferation of operators has resulted in the supplies of goods of divergent standards and quality. Secondly, the increased market demand for food has induced farming with emphasis on quick returns. Chemical substances are thus used to increase the volume of output, resulting in the presence of residual chemical substances in the produces. Thirdly, with increasing public concern about food safety, coupled with enhanced capacity in testing and inspection, harmful substances that might have been overlooked in the past can be identified in tests now. Of course, there are also risks brought about by pollution and virus mutation, with avian flu being the most prominent example.

Therefore, in order to assure the safety of live and fresh food sold in Hong Kong, we must prescribe the right medicine, and it has to be done by tracing it step by step along the supply chain, instead of only relying on more stringent tests of produces available in the market. If efforts in ensuring food safety should fail at the top end of the supply chain, the Government may have to impose a total ban on the import of a certain type of produces whenever problems are found in tests. Then eventually Hong Kong people may have to face a severe shortage of food supply, and prices will shoot up substantially due to shrinking supply. Members of the trade cannot survive either. Even in the absence of a government-ordered mandatory recall, they will still be the first ones to suffer if a certain type of food is found to be problematic. Even if the produces they sell have already been proved in order, the sales of this type of food will still drop substantially.

Therefore, the trade supports the Government to enact a comprehensive food safety law for live and fresh food, but the law must be compatible with the regulatory regime and safety standards of our major supplying regions (including the Mainland) in order to facilitate compliance. The Government must enhance its communication with the trade to ensure that enough time can be given to the trade for adaptation to the new regulation. In addition, within the territory of Hong Kong, more stringent market control measures should be in place to prevent smuggled goods from adversely influencing the market, thus putting legitimate produces in a disadvantageous position.

The Central Government has already implemented export control measures on poultry eggs and vegetables, although it was a bit too "hasty" from the giving of notification to actual implementation. The control measures for the export of vegetables implemented on 1 April had become effective with a lead time of just a couple of months. So the trade was not fully ready in their operations in adapting to the new measures. Subsequently, the Food and Environmental Hygiene Department (FEHD) and the Centre for Food Safety negotiated with the mainland authorities and succeeded in bringing about the establishment of a vegetables processing plant in Shenzhen for rhizomes and melons, or "hard vegetables" as they are commonly called; and the effective date for implementing the measures was also postponed to 1 October. Members of the trade are grateful to the Government for the assistance provided in this incident, and it is hoped that the Government can continue to maintain communication and offer assistance. This point is fully in line with item (3) and item (4) of the original motion.

With regard to fruits, notice has been given by the mainland Government that the control measures will become effective on 1 July. The trade and I have agreed to make an appointment with the Government to hold discussion on ways of assisting importers in adapting to the new regulations.

The lead-seal control implemented by the Mainland on export food means that produces entering Hong Kong should have passed tests. As such, why should I add the clause "implementing the arrangement for all live and fresh food to be distributed in the Government's wholesale food markets" in my amendment? This is primarily a measure meant to prevent standards-compliant food from being affected by the crackdowns on smuggled food. As the Secretary said, it is hard to eradicate all smuggled food after all.

However, if the Government regulates only legally imported live and fresh food, uncertain circumstances will continue affecting the trade. Let us take the incident of fish contaminated by malachite green as an example. The entire freshwater fish market was brought to a halt after the FEHD had found an excessive amount of malachite green in a fish, the source of which was unidentified, during a random check in the market. For this reason, the trade suggested that all live and fresh food should only be unsealed in the Government's wholesale food markets under the supervision of relevant government departments and that samples are kept for testing prior to goods distribution. In doing so, even in the event of problems, it will be easy to trace the source and whereabouts of the food.

The Government is in the process of drafting a food safety law, which covers the issue of mandatory recall of problematic food. As a matter of fact, whenever there are news reports saying that certain types of food are contaminated, customers are unwilling to buy those types of food. Since it is hard to exercise control at source, coupled with the fact that pollution is beyond the control of the trade, there have been more and more stringent random checks. Under these circumstances, it is envisaged that problematic food will continue to emerge in the foreseeable future. For this reason, the trade would like to see that in the meantime of introducing a food safety law, an emergency relief fund for the live and fresh food industry can be set up, so that operators, small vendors in particular, can apply for assistance in the event of operation difficulties caused by food safety issues.

We are not asking for money from the Government. Ideally, a seeding fund can be provided, whereas the trade will shoulder a portion of the funding amount by means of, for example, the addition of a small levy to the registration fee for food importers or the license fee for fresh provision shops. In taking this course of action, it will not be necessary for us to shift the cost onto the consumers, or ask for money from the Government whenever an incident occurs. I hope the Secretary can take this constructive suggestion into consideration.

In many cases, the sources of problematic food are outside the jurisdiction of Hong Kong. After all, Hong Kong is a place with only limited land, and there is not much room for expansion of the agriculture and fishery industry. But the operators here do possess valuable experience, together with a good understanding of Hong Kong's safety standards. If they make investments in



the Mainland and apply their experience there, they could reverse export their produces to Hong Kong. This could be more effective in ensuring a stable supply of live and fresh food for Hong Kong. Therefore, it is hoped that under the framework of Mainland/Hong Kong Closer Economic Partnership Arrangement, the Government could assist Hong Kong businesses investing in agriculture and fishery industries in the Mainland in obtaining priority for reverse export of their compliant products to Hong Kong for sale in the market.

Madam President, live and fresh food is a daily necessity for everybody. The trade has an important role to play. We hope that Hong Kong can be free from problematic food and people can feel safe in food consumption. This is the only way of boosting the sales of products in the market. Therefore, there is no contradiction at all in today's motion, and the Liberal Party will support Mr TAM Yiu-chung's original motion and Mr Fred LI's amendment. I so submit. Thank you, Madam President.

**MR FRED LI** (in Cantonese): Madam President, the Democratic Party has all along attached great significance to food safety. In January, I also moved a motion very much similar to today's motion, which requested protection for safety of food supplied to Hong Kong.

I am indeed very grateful to the Government because after I had moved the motion then, it gave us a proactive response, indicating that the Government was willing to consider the proposal put forward by the Democratic Party. On 4 May this year, regarding my motion, the Government tabled a progress report to Members of this Council. In it, the Government put forward five points:

- (1) The Government will table a legislative proposal within six months on regulating the standards of residual pesticides;
- (2) The Government plans to implement the arrangements for the registration of food importers, so as to trace the sources of problematic food;
- (3) The Government will enact a food safety law, which will include the regulation of imported aquatic products, vegetables and fruits as well as the formulation of arrangements for recalling/banning food.

This bill will be tabled to this Council for deliberation in the next Legislative Session;

- (4) The Government will enact legislation to regulate the import of poultry eggs within this Legislative Session; and
- (5) The Government shall study, in conjunction with mainland departments, ways of boosting the feasibility of tracing the sources of food supplied to Hong Kong from the Mainland.

With regard to the requests put forward in today's motion, basically, the Government has already undertaken to enact a food safety law and it will also implement an imported food registration system. We think that, since the Government has given a proactive response to our earlier motion, we shall support the original motion.

In the Chief Executive's Question and Answer Session held this month, I raised a question to the Chief Executive on the issue of vegetables and fruits being easily brought into Hong Kong. I believe Chief Executive Donald TSANG did not have an in-depth understanding of the issue, so in his reply he said the authorities could not inspect each and every truck carrying vegetables into Hong Kong. At that time, I had already explained that I was not requesting inspection of each and every truck. Instead, the crux of this issue lies in the fact that the Food and Environmental Hygiene Department (FEHD) now is not conferred with the authority to random inspect trucks carrying vegetables. Every time when random inspection is conducted, the FEHD has to rely on the authority of the Customs and Excise Department by conducting joint inspection on residual pesticides. So, the Government must make legislative amendments as soon as possible. Besides, there is even a shortage of parking spaces in Man Kam To Crossing. So large trucks that are over 20 tonnes actually cannot park there to undergo random inspection. The facilities at the Man Kam To Food Control Office can no longer cope with the development of the current era, therefore, I have proposed in my amendment to expeditiously study the expansion of the Man Kam To Food Control Office.

In fact, I am very grateful to members of the Greenpeace for making a site visit to the Man Kam To Food Control Office specifically for this motion. And in doing so, they discovered that most of the vegetable trucks simply passed the

Crossing without stopping to undergo inspection. After this, some mass media followed up this incident by sending reporters there to observe the situation. They discovered that only trucks carrying livestock (mainly chickens) would line up to undergo inspection, whereas vegetable trucks would just speed past the Crossing, absolutely not required to stop and undergo any inspection.

If we go to buy vegetables from the market, the many tonnes of vegetables supplied from the Mainland most likely have not undergone any inspection. The law has opened up an unchecked freeway for the suppliers, who can bring vegetables into Hong Kong without being subject to any restriction. Obviously, the period between 6 pm to 8 pm in the evening is the time with the greatest amount of vegetable trucks passing through the Man Kam To Crossing — about 200 trucks. But in fact the Food Control Office can only allocate two parking spaces to FEHD officers for the purpose of conducting random inspection. Please imagine this: With 200 trucks awaiting inspection, but the officers concerned can only make use of two parking spaces to inspect a small proportion of the vegetables. From this, we can see how great protection we are enjoying. Therefore, the Democratic Party proposes this amendment in order to step up random inspection.

Apart from this, in this day and age when vegetables and fruits are found to carry large amount of pesticides, we should in fact encourage the people to consume organic vegetables and fruits. As far as we understand it, there are about 80 local farms engaging in organic farming. The Hong Kong Organic Farming Association has also made great efforts to promote organic farming. In interviewing members of this association, we have grasped four points of opinion:

- (1) Organic farming standards commonly accepted by all sectors should be formulated and a label identification system should be introduced, so as to prevent non-standards-compliant products from entering the market;
- (2) In addition to the existing sale channels such as retailing and vegetables organizations, farmers' markets could be introduced. Farmers' market is a kind of flea markets selling organic agricultural products. It provides producers with a direct sale channel and it can also boost the communication between the producers and consumers;

- (3) When wholesalers go to the Mainland to establish farms or purchase products, they should exercise prudence in identifying whether the products for sale are really products of organic farming, so that consumers can have confidence in buying such products; and
- (4) Consumer education should be stepped up; publicity campaigns and educational work targeting at the public should be launched to promote organic vegetables.

Regarding item (1), as of today, even though there are two authentication centres in Hong Kong specifically providing authentication services for organic vegetables, they cannot cover all the 80 local organic farms. Therefore, there is no way we can verify whether other farms have complied with the standards in the farming processes. Even if they do not comply with the authentication standards, since they have not participated in the scheme, they can still continue labelling their produces as organic vegetables. In that case, how can we solve this problem?

Apart from the labels, technical support and marketing are also problems faced by farmers. Although Hong Kong has started organic farming, and the Government also provides technical support services to farmers from time to time, I still frequently hear farmers say that they hope the Government can do more. I know that the Organic Resources Authentication Centre of the Baptist University had visited some of the farmers, and its staff workers have recorded in writing the farms' aspiration to increased support. We hope that later on the Government can give us a detailed clarification: Regarding organic farming, can the Government provide more support to assist farmers, so as to boost the local organic farming industry? Another significant issue is the marketing problem. I believe many farmers hope that the involvement of intermediaries can be reduced, so that they can pass quality organic vegetables to the hands of consumers by way of direct sale. In fact, although the Good Farmers Scheme promoted by some supermarket groups or the Accredited Farms Scheme launched by the Vegetable Marketing Organization could assure a certain sales volume, the administrative costs are quite high. For some farmers who grow organic vegetables on a smaller scale, such costs are indeed a heavy burden. Therefore, if the Government can explore the market for the farmers, it will help to improve the livelihood of the farmers to a great extent, and it will also bring about an indirect stimulating effect on organic farming.

Finally, with regard to Mr Vincent FANG's amendment, on the one hand, the Democratic Party agrees that the Government should consider providing assistance to certain trades when they really face difficulties. There were precedents in the past and the outbreak of avian flu was a classic example. We fully support the provision of compensation by the Government. Another example was the surrender of pig rearing licences. But on the other hand, is it necessary to establish an emergency relief fund for the live and fresh food industry on a permanent basis? Since, we have not practically conducted any serious discussion on this subject, so we think that this proposal should be subject to further discussion. Besides, when the difficulties of a certain industry are caused by some government policies, we are always willing to study whether or not the Government should provide some assistance to the industry. I find this approach more appropriate. Since our Government often encourages the people to be self-reliant, we should also adopt this attitude in dealing with the trades. We should never underestimate the abilities of businessmen in accomplishing their own transformation and their pursuit of opportunities. Therefore, the Democratic Party will abstain from voting on Mr Vincent FANG's amendment. Regarding Mr Tommy CHEUNG's amendment to my amendment, since both of us basically support the relevant ideas, the Democratic Party will support his amendment.

With these remarks, I propose my amendment.

**MR TOMMY CHEUNG** (in Cantonese): President, I would like to extend my thanks to Mr TAM Yiu-chung for proposing today's motion, and Mr Vincent FANG and Dr Joseph LEE for their amendments.

In fact, many of the proposals put forward today by Honourable colleagues on safeguarding the food safety of live and fresh food were actually mentioned by the Government in the past. And the Government had even undertaken to draw up plans for their implementation in the short term.

In spite of this, Honourable colleagues still took the trouble of proposing very similar motions repeatedly to urge the Government to implement the relevant measures. This is because during the past few years, even though the Government has time and again promised to make improvement, food incidents still occur all the same. This illustrates that the pace and capability of the Government in responding to problems are still not good enough to eliminate the

dangers posed by the realistic circumstances to society. The people are still very discontented. On this point, the authorities simply cannot shirk their responsibility.

The repeated occurrences of food incidents have exposed the fact that food control in Hong Kong is largely carried out by administrative measures without any legislative basis. As such, it is difficult to completely curb the entry of problematic food. So the urgent task before us is the enactment of legislation to plug the loopholes. There are, however, three points we must note in the process of enacting legislation.

First, we must ensure that various types of live and fresh food commonly consumed by the people, such as fruits and vegetables, aquatic products and poultry eggs, and so on, are comprehensively covered and uniformly regulated by a food safety law. This will not only facilitate law enforcement and systematic control, but also assist the trade in making adaptation and minimizing confusion. Second, the food safety standards, quarantine measures and labelling system in question must be in line with international practices and local needs and be kept abreast of the times in order to reduce ambiguity, and this will be helpful to members of the trade as they can have some standards to follow. Third, prudence must be exercised in the process of enacting legislation and the trade must be extensively consulted to avoid imbalance and overkill to the extent of stifling the vitality of the trade. Most importantly, we must ensure that food prices will not rise drastically, and the choices of food will not dwindle substantially, so as not to let the drawbacks outweigh the benefits.

As a representative of the catering industry in this Council, I must stress that members of the trade are also victims of food incidents. As I have always said, in the past, when the Government took actions to enforce food safety, it often found fault with food retailers and eating establishments. This was very unfair to the trade.

There is very little the trade can do in taking preventive and supervisory actions, particularly when it comes to imported food. Given the complicated mode of operation throughout the food supply chain, even if health certificates and labelling certificates were produced by the suppliers, it would still be very difficult for members of the trade to guarantee that the supplies are 100% originated from standards-compliant sources. After all, given the ever-changing

problems of viruses, pesticides, residual chemicals and carcinogenic substances, it would not be possible for the trade to prevent the occurrence of all these problems.

The live poultry trade is a very good example. I believe before the outbreak of avian flu, nobody would have thought that in Hong Kong, which is internationally renowned for preparing gourmet food using live poultry as the ingredients, the live poultry trade could be gradually pushed by the Hong Kong Government to the verge of extinction. Currently, the plan for implementing central slaughtering of live poultry is underway, but the Government has yet proposed any compensation package to the live poultry trade. The live poultry trade is made to bear all the consequences of the epidemic. Is this fair to the trade?

Apart from the live poultry trade, there have been incidents of malachite green and residual chemicals which were found in freshwater fish in recent years, and whenever such incidents occur, the entire retail and wholesale market for freshwater fish was virtually brought to a standstill, resulting in heavy losses sustained by the trade.

For this reason, it is necessary for the authorities to plan ahead and set up an emergency relief fund for the live and fresh food industry to provide emergency assistance to the affected trades in the event of adversity in the industry. In fact, this is hardly a new initiative at all, because the authorities had in the past allocated more than \$100 million from the public coffers to set up a loan fund to help fishermen tide over the annual fishing moratorium and to pursue sustainable development.

I must emphasize that the objective of setting up the fund is to render assistance to innocent and affected members of the trade. By providing them with some loans to improve their cash flow, they could be spared the fate of winding up their operations just due to an individual incident. On the other hand, they could continue to pay the salaries to their employees, so that the employees will not lose their jobs all of a sudden. In doing so, the fund not only helps solve the pressing difficulties of the trade, but it also promotes social stability. Is it not a worthy cause?

I strongly support the original motion which demands the Government to strengthen the liaison and dissemination of information with the trade. I believe

the authorities should take a more proactive approach in building up liaison with various provinces in the Mainland as well as other countries, with a view to understanding the latest market trends, collecting reportable information, and setting up an extensive and up-to-date database, so that whenever there are changes or news of food safety hazards jeopardizing public health, the authorities can activate the established channels to notify the trade for immediate responses and follow-up actions. This is what we call effective crisis management.

I would like to point out that we rely on imported sources for the provision of 90% of food available in Hong Kong, particularly the food from the Mainland. Therefore, stepping up control within the territory is simply inadequate. Source control has to be stepped up as well. As a matter of fact, the State is prepared to work with the authorities. Therefore, I believe the authorities are capable of redeploying the resources and increasing the manpower to go to the Mainland regularly to visit farms, vegetable farms, fish farms and distribution centres supplying food to Hong Kong to conduct random checks or technical exchanges. This can further ensure that the food supplied to Hong Kong can comply with the required safety standards. This could achieve even better results than conducting random checks in Hong Kong.

I have proposed an amendment to Mr Fred LI's amendment just for a simple reason. It is primarily because I do not want to see that, once Mr Vincent FANG's amendment is voted down, his less controversial suggestions are voted down too.

As such, my amendment has retained the three suggestions made by Mr Vincent FANG, including, first, to ensure that Hong Kong's food safety standards for live and fresh food comply with international practices and local needs; second, to implement the arrangement for all live and fresh food to be distributed in the Government's wholesale food markets to facilitate control and supervision by the authorities and minimize the mixing of non-standards-compliant food. Lastly, I wish to remind Members that while we are trying to help the local farming and fishing industries, let us not forget those members of trade from Hong Kong who have set up either mariculture farms or agricultural farms in the Mainland. I hope I can have Members' support.

President, I so submit.



**MR WONG KWOK-HING** (in Cantonese): Madam President, regarding the food safety problem of live and fresh food as mentioned in the original motion, I would like to focus my discussion on the safety of vegetables supplied to Hong Kong.

As we all know, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) decided in January this year that stringent "one-stop" control measures would be imposed on all vegetables supplied to Hong Kong. In this connection, the Shenzhen Entry-Exit Inspection and Quarantine Bureau has also adopted the consequential measures. For this reason, the Social Affairs Committee of the Hong Kong Federation of Trade Unions (FTU) paid two visits to Shenzhen on 14 and 21 of this month respectively for fact-finding and exchange purposes.

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

At present, the mainland authorities have implemented seven measures on vegetables supplied to Hong Kong, in order to ensure the people's safety in consuming vegetables. The first measure is, all vegetables supplied to Hong Kong must be from listed bases. The second measure is, vegetables supplied to Hong Kong for direct or indirect export must pass the required standards upon inspection, and be attached with standardized label identification and lead seals before shipment to Hong Kong. This measure is adopted to prevent the mixing of smuggled vegetables with vegetables ready for export to Hong Kong. The third measure is, if mainland vehicles delivering vegetables to Hong Kong must be changed to vehicles that can run on the roads of both Hong Kong and Guangdong Province, then this must be done in specified interchange venues in order to prevent the swapping of smuggled vegetables with vegetables ready for export to Hong Kong. The fourth measure is, before all vegetables trucks leave the boundary, mainland quarantine officers stationing at the Man Kam To Crossing will check and verify that all the lead seals are in order before such trucks are permitted to pass the Crossing. The fifth measure is, the AQSIQ has set up a vegetable processing and distribution centre in Nanshan, Shenzhen, for vegetables supplied to Hong Kong, to tackle specifically the problem faced by enterprises not having any bases or processing grounds in supplying vegetables to Hong Kong. The sixth measure is, apart from conducting speedy tests on leafy vegetables, the Nanshan Vegetable Processing and Distribution Centre also

conducts inspections and tests on non-leafy vegetables (the so-called hard vegetables). This is unprecedented. If tests reveal that certain non-leafy vegetables carry an excessive amount of pesticides or heavy metals, apart from notifying the relevant authorities and returning the goods to the sources of supply, the authorities will ask the enterprises concerned to stop purchasing vegetables from the sources found to have problems, and will pursue the responsibility with the parties concerned. The seventh measure is, vegetables for re-export through Hong Kong are required to be transported by refrigerated trucks, and such vegetables are not permitted to be sold in the Hong Kong market.

Deputy President, the mainland authorities have adopted seven measures to ensure the safety of Hong Kong people in consuming vegetables. But what has the SAR Government done in return? I find that at present the SAR Government is still excessively slow in responding to the situation, and it has not formulated any corresponding measures in response to the seven measures introduced by the mainland authorities. According to members of the trade, there are altogether five loopholes in the SAR Government's efforts in ensuring Hong Kong people's safety in consuming vegetables. The first loophole is, it has not introduced timely legislative and administrative measures to cope with the strengthened control measures of the mainland authorities, and the regulatory laws are outdated. While we have heard a lot about the so-called food safety law, we have absolutely no idea when it will be enacted.

The second loophole is, the Government has not enacted any legislation on food recall. And the legislation on food recall has been delayed for 10 full years. I already put forward such a proposal in the days of the former Urban Council, and the issue has been dragging on for 10 full years, and it is still pending.

The third loophole is, not every vehicle is inspected of their lead seals at the Man Kam To Crossing. Most of the vegetable trucks are not checked at random, and even many trucks pass through the Crossing without stopping. Some Members have already mentioned this earlier on.

The fourth loophole is, with the exception of the Cheung Sha Wan Vegetable Marketing Organization, all the four wholesale food markets, including the ones in Yuen Long, Fanling, Western District and Cheung Sha Wan, and so on, are not manned by the FEHD's law-enforcement officers who

should be responsible for performing the monitoring work of checking and inspecting the lead seals. This has become an unchecked situation. Even though lead-seal control is implemented in the Mainland, there is no one in Hong Kong to conduct verification.

The fifth loophole is, all these have made some merchants use ordinary trucks for transportation. So, those vegetables originally meant as supply for the local market are re-exported, whereas those vegetables originally designated for re-export are changed for sale in the local market. However, since the standards for re-export and the local market are very much different, so this has led to some cheating and the situation is very confusing indeed.

In the face of these five major loopholes in the food safety of vegetables, I would like to ask the Secretary three questions via the Deputy President. The first question is, I would like to ask the SAR Government when and through what kinds of measures it can plug the five major loopholes mentioned by me just now. What kind of measures will the Government adopt in response to the seven measures adopted by the mainland authorities? What is the timetable? This is the first question.

The second question for the Secretary is: When will the Government table a comprehensive food safety law? What is the timetable?

The third question for the Secretary is: When will the bill on food recall be tabled? Will it be tabled after all? What is the timetable for this?

In the face of Hong Kong people's food safety problem in terms of live and fresh food, and in the face of the five major loopholes in the supply of vegetables to Hong Kong, if the Government is still at a loss as to what to do, or is still very slow in responding, then we shall have to make use of an oft-quoted line of Mr LU Ping in asking Secretary Dr York CHOW through the President, "What shall we do? What shall we do? What shall we do?" Is there really no way for us to tackle the food safety problems faced by Hong Kong people in eating vegetables and other foods? I hope the Secretary can respond to these three questions when he speaks later on. I hope my question of "What shall we do?" can be answered by the reply of "this can be done this way".

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

**DR JOSEPH LEE** (in Cantonese): Deputy President, the policy on food safety in Hong Kong is incomprehensive because it is not governed by any food safety standards and food legislation. The absence of these two major criteria means that the Centre for Food Safety can only conduct random checks on the ingredients of food on a limited scale. In dealing with the enormous market of imported food, the existing inspection and testing system and facilities have failed to conduct comprehensive tests on different types of live and fresh food by employing different safety standards in identifying harmful substances. So, it cannot make use of empirical data and global standards systematically to formulate effective safety standards for defining high quality and poor quality imported food for purposes of classifying different types of food and preventing the importation of poor-quality food based on a set of reasonable safety standards. As a result, poor-quality live and fresh food from the Mainland can pass official inspections and reach the market in unrestricted large quantities, thus posing danger to the health of the people as well as our future food safety.

In fact, in order to safeguard the food safety of imported live and fresh food, the Government must promote the co-ordination between its food safety policy and the surveillance facilities. In this regard, I think, at the policy level, the Government should draw reference from international food safety standards in evaluating the risks posed by the source of the imported food and the safety standards adopted in the source country. In addition, basing on the local consumption pattern and risks analysis, the Government should formulate a series of food safety standards designed specifically for Hong Kong to govern the importation of live and fresh food such as vegetables, live fish and poultry eggs, and so on, and there should be explicit specifications on the criteria and standards for conducting random tests on different types of food. In this way, the authorities will be able to assess the risks of imported food more systematically and comprehensively by using the data and to formulate the maximum tolerance limits on local food safety.

A set of well-defined local safety standards can help distinguish the discrepancies in the food safety acceptance levels between the origin of export food and Hong Kong, and this will prevent the occurrence of situations where certain imported food items having passed mainland safety standards are, due to different standards in the two places, found to be non-compliant according to the safety expectations in Hong Kong. Furthermore, a set of well-defined local safety standards will enable the public and organizations responsible for

monitoring food safety to have a better understanding of the protection offered to them in terms of food safety, and they can discuss whether there are any loopholes or inadequacies in the standards, and they may convey their viewpoints to the Government in this regard and thus make the Government respond, review and update the safety standards for imported food in due course. With regard to the formulation of local safety standards, I would like to stress one point, and that is, the Government tends to overlook the future safety issue of food, meaning the safety level with respect to nutrients and accumulation of substances in the human body on a long-term basis after prolonged consumption of a particular type of food. We are talking about the compound effect of the addition of artificial, carcinogenic substances, the risk of which we are unable to assess. Therefore, from the perspectives of consumers and health, we should have "zero tolerance" towards the addition of artificial, carcinogenic substances. I would like to urge the authorities to adopt a more prudent and long-term view in this regard and take long-term safety risk into consideration in the formulation of local safety standards by tightening the standards on addition of carcinogenic substances and making projections on undetected potential risks in a systematic manner.

Deputy President, the Bureau has always been criticized for its belated response in handling food safety-related issues. Basically, the Bureau has overlooked the concept of taking precautions, which is advocated in crisis management. Even when an incident has developed to a very severe stage, the release of the message on whether or not the food in question is safe for consumption is still very confusing. Besides, the authorities do not have any authority, nor is any such mechanism in place, to require the trade to suspend temporarily the sale of a certain food item or have it recalled.

Therefore, I would like to urge the Government to enact a more comprehensive food safety law in accordance with the food safety standards and safety system, including a law on food recall. When excessive harmful substances are found during a random check, the food safety law can be invoked to mandatorily direct importers or manufacturers to recall the food of his own accord. In addition to offering direct and immediate protection to consumer interests, this will help elevate the safety threshold on imported food for Hong Kong indirectly in the longer run.

Since the mainland authorities have strengthened the inspection and management system for vegetables supplied to Hong Kong with effect from

1 April, the Hong Kong Government has openly said that a law will be enacted to control fruits and vegetables, and consideration is being given to seeking advice from experts on food safety through the setting up of a committee. However, we can see that in many cases, the Government simply keeps considering the issues at stake without actually working out a specific legislative timetable. As a result, society as a whole continues to live under the shadow of food safety. In this connection, I hereby urge the Government to expedite the implementation of relevant arrangements and report to this Council the progress, specific matching arrangements, facilities and the implementation timetable of such arrangements as soon as possible.

In addition, Deputy President, I would like to urge the Government to advise on the formation of a line of defence by carrying out random checks and inspections at multiple levels with a view to stepping up efforts on combating smuggled food. The Health, Welfare and Food Bureau of Hong Kong and the State General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) have agreed to set up a special task force to work on a food registration system for Hong Kong and to exercise source control for food. Imposing source control is not as easy as it appears, and the source of mainland food is the key to effective food control in Hong Kong. However, the issue of safety of food supplied from the Mainland is not a problem that can be resolved right away. Smuggled food remains an issue of concern. For this reason, a system of defence with random checks and inspections at multiple levels should be set up in Hong Kong, including the arrangements for distribution through the Government's wholesale food markets, as Mr Vincent FANG has suggested in his amendment. Source control of food at the wholesale level can combat blatant transactions of illegally smuggled food. As regards border control points, the Man Kam To Food Control Office can be expanded to step up random inspection of vehicles carrying vegetables and fruits, coupled with the imposition of heavier penalties. At the retail level, more frequent random checks can be conducted and the display of certificates testifying that the food is safe for consumption should be made mandatory. Prior to the introduction of RFDI technology, the Government must explain to the public how a three-pronged approach can be adopted to combat smuggled food through deployment of additional facilities and resources.

With these remarks, Deputy President, I support both the original motion and the amendments.

**MR WONG YUNG-KAN** (in Cantonese): Deputy President, over 90% of live and fresh food in Hong Kong is imported, and food involved in food safety incidents is all imported from outside Hong Kong, and among such food, those supplied from the Mainland account for the largest proportion. With repeated calls from society, together with the requests made by many Members, Deputies to the National People's Congress and delegates to the Chinese People's Political Consultative Conference, and the assistance from the relevant departments of the Central Authorities, the mainland authorities have made continuous efforts to strengthen their systems in this aspect, and reinforced the control mechanisms of the inspection and quarantine systems for ensuring food safety. Among such measures, stringent export measures are already in place for live poultry and livestock. However, since Sudan dye was found in poultry eggs in the Mainland last year, the authorities have stepped up five measures for implementing regulatory control on poultry eggs supplied to Hong Kong, including the requirement introduced since 1 January this year that all poultry for export to Hong Kong must be attached with product information.

In order to comply with the requirements laid down by the Entry-Exit Inspection and Quarantine Bureau, the Shenzhen Municipality also implemented the initiatives contained in a notice on tightening the control on vegetables supplied to Hong Kong in January this year, which stipulates that, with effect from 1 April and 1 October, all vegetables supplied to Hong Kong, including leafy vegetables and non-leafy vegetables (that is, what we called "the hard vegetables", such as taros and potatoes, and so on), must be from listed bases. In fact, the measures related to "hard vegetables" had also been scheduled for implementation together with other vegetables on 1 April. But after Mr Vincent FANG and I had met and discussed with the Director, the implementation date of the hard vegetables measure had been postponed to 1 October. From these incidents, we can see the aspirations of the trade and that they need to have some time to act in order to facilitate the implementation of such measures. In the meantime, they will implement label identification and lead-seal control, so as to enable consumers to identify the vegetables and to trace problematic vegetables. From that day onwards, the Shenzhen authorities have established a new vegetable processing and distribution centre in Nanshan, which serves as the centralized point for processing and selling hard vegetables for supply to Hong Kong.

The relevant measures for fruits will be implemented with effect from 1 July. In future, all vegetables and fruits supplied to Hong Kong will have to carry the certification provided by registered farms.

Deputy President, from the above, we can see that the mainland authorities have kept perfecting control measures on the safety of live and fresh food. But as Hong Kong is a Special Administrative Region, this is the most that the mainland authorities can do insofar as their responsibility to Hong Kong consumers is concerned; and the rest must be done by the SAR Government. However, we cannot see that the SAR Government has adopted any new initiatives or any new arrangements to cope with the supply of vegetables and hard vegetables (including fruits) to Hong Kong and how it has made proper matching arrangements for undertaking inspection and quarantine procedures. We think there are several relatively obvious loopholes:

First of all, there is no comprehensive food management legislation. At present, there are strict requirements on the inspection and quarantine and transport and sale of imported live poultry and livestock and fresh live food. Apart from these, there are no laws to control the import of vegetables, poultry eggs and aquatic products, and no hygiene certificate is required for their import into Hong Kong. Since some of such products are smuggled into Hong Kong, where can they get any hygiene certificates? This has become a control loophole. So, for all kinds of mainland live and fresh food originally not for export to Hong Kong through official channels, as long as such food can be transported into the territory, they can be sold legally in Hong Kong. Meanwhile, according to the existing laws, even if such food is discovered not attached with any hygiene certificates, the Government cannot refuse its import. The most that the Government can do is to sample check such food or impound it for inspection.

Secondly, there is no import registration system. Although the mainland authorities have gradually implemented a source label identification system on live and fresh food supplied to Hong Kong, there are no corresponding arrangements on the part of Hong Kong, such as the label identification information of imported food is not required to be checked on entry into Hong Kong, and there is no registration system for local food importers, which requires them to keep sale records. Therefore, when food incidents happen, it is very difficult for the FEHD to trace the sources of problematic food, so as to prevent the continuous inflow of such problematic food into Hong Kong.

Third, as of today, we still have not enacted any law to confer the Government with the authority to recall and ban the sale of problematic food. At the moment, when the FEHD and the Centre for Food Safety find some food



to have problems, they cannot recall such food or prohibit the retailers concerned from selling such food. All that they can do is to request them, by way of advice, to recall such food. This has failed to catch up with the handling approaches prevalent in most developed countries or certain legislation in the Mainland. It is outdated. We think that, in the aspect of handling food, the Government should have a proper food recall system in order to tackle the problem.

Fourthly, I find the support for the local trade very insufficient. There is already a registration system for local food. But how can the work in this regard be done properly? It seems that the Government only intends to impose control, but it does not assist them in pursuing any development. Therefore, Deputy President, a colleague has mentioned the problem of food supplied from the Mainland to Hong Kong. I would like to point out that, for many years, it has been extremely rare for vegetables supplied by accredited farms to Hong Kong to have any problem. We think that, if Hong Kong farmers can establish production bases in the Mainland, this will enhance food safety in some measure. Therefore, I hope that when the local livestock industry ceases to operate in Hong Kong and when members of the industry launch their productions in the Mainland, the Government can give them a helping hand in their development.

Deputy President, I so submit.

**MR ALAN LEONG** (in Cantonese): Deputy President, originally, according to conventional wisdom, we would start worrying that certain types of food might not be safe only when summer comes in June and July. However, the situation has changed in recent years. Now, while summer has not arrived yet, we have already encountered several occasions on which we have to worry about food safety. Why? It is because the food is unsafe now not just because of bacteria, but also because of some inedible chemicals.

Undoubtedly, we can see that the SAR Government has made quite some moves in the area of food safety in recent years. For example, the Government has established the Centre for Food Safety and it has discussed with mainland officials on new measures from time to time. In spite of this, food safety incidents still occur very frequently, and the people are worried about this all the time, and they have lost confidence in food safety.

The SAR Government often reminds us that in order to ensure the safety of food supplied to Hong Kong, we must do this by way of co-operation between Guangdong Province and Hong Kong. As suggested in the original motion and the amendments, on the other side of the Shenzhen River, that is, the Mainland, a lot of new initiatives have been implemented to target at food supplied to Hong Kong. For example, they have strengthened the quarantine and management of vegetables, enforced quarantine and seal identification measures for freshwater fish and will step up the regulation of fruits and melons, and so on. On the contrary, Deputy President, it is the Hong Kong side that has been procrastinating. Even in Mr Vincent FANG's amendment, it is said that the Government will only enact legislation within the current year to strengthen the control of imported poultry eggs and cultured aquatic products. Regarding a comprehensive food safety law, as well as other relevant quarantine and retail management systems, we have all along heard a lot about them, but they have never been implemented.

In the Question and Answer Session held in the beginning of this month, the Chief Executive sighed how difficult it was for us to ensure food safety. He said, to this effect, "It would be impossible for the Centre for Food Safety to check each and every vegetable and tangerine." He also said, "We cannot afford to check each and every truck." After listening to such remarks, I could not help feeling worried. It dawned on me that "stepping up food safety", a remark frequently made by the SAR Government, actually depends entirely on the amount of samples that can be sent to the laboratories for testing, or whether we could inspect more trucks of vegetables more frequently, in the hope of detecting more problematic food. However, according to international experience, such a hide-and-seek strategy adopted for cracking down on problematic food has already become outdated.

Deputy President, many colleagues in this Council often mention a food safety monitoring system with the concept of "from farm to table". The major food safety strategy based on this concept is a food supply flow tracing mechanism which seeks to ensure that food, through certification systems, comply with the hygiene standards in different links such as manufacturing, transportation, processing and retailing, and so on. At present, many developed countries have started to implement food supply tracing systems one after the other. For example, the European Union stipulates that retailers are not allowed to import food from non-certificated local or oversea manufacturers; in Japan, an objective has been adopted to aim at attaching all food for sale with production history by 2010. In the United States, it stipulated four years ago

that all imported live and fresh food would be destroyed by the Customs on the spot if information on its production history cannot be provided within four hours.

Is it unrealistic to propose the implementation of a tracing system in the territory for food supplied to Hong Kong? I think this is absolutely not true. The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) has now specified that vegetables supplied to Hong Kong must be from registered vegetable bases. On the other hand, quarantine and seal identification measures will be enforced for vessels carrying freshwater fish to Hong Kong. Insofar as the Mainland is concerned, the regulatory measures on food sources and transportation processes have already been initiated. If the authorities in both the Mainland and Hong Kong can work together in bringing in and linking up the regulatory work processes in the different links of the supply chain of individual types of food, and if such measures can be further extended to all live and fresh food, then a complete food tracing system can thus be formed.

Deputy President, if the SAR Government really intends to step up the efforts in ensuring food safety, it should not devote too much attention to calculating the quantity of vegetables and trucks that it has to inspect. Instead, it should strengthen its communication with the mainland authorities, so as to enable the two places to gradually establish a unified and comprehensive food chain regulatory and tracing system and food safety standards; in the meantime, the authorities should strengthen the regulation at the local level, including expeditiously enacting a food safety law, implementing a mandatory food importer registration scheme, and requiring importers to keep their import and sales records. Besides, the departments concerned should be expeditiously given full authority to recall food. The power to recall food is not only exercised when the food sold by local merchants are found to have problems; instead, such food would also be recalled tentatively if they are found to have problems overseas.

Deputy President, the SAR Government must take quick and strong actions to restore the confidence of the people. We hope that the Government can expeditiously introduce a complete and powerful food safety law, a comprehensive food safety strategy for both Hong Kong and Guangdong Province as well as a timetable for their implementation. In this way, we can have an explicit demarcation of responsibilities among people working in the

trades of food importation, transportation and retailing, thus enhancing the food safety level in Hong Kong.

Deputy President, I so submit.

**DR KWOK KA-KI** (in Cantonese): Deputy President, first of all, I would like to thank Mr TAM Yiu-chung for moving this motion again because this is in fact the second time that this motion is moved in this Council. There will not be too many motions that can be moved in the Legislative Council, therefore, very often many motions are debated repeatedly, if necessary.

Today, this motion is proposed for discussion for the second time. The most significant point is: It reflects that both the Legislative Council and the people are very concerned about food safety. It has been explicitly said in the original motion that the mainland authorities have already done a lot since 1 April. They have strengthened the inspection and quarantine system for vegetables supplied to Hong Kong, including designating supply farms, implementing label identification and lead-seal control and strengthening certification, and so on. But, after all, the most important question is: What actually has the SAR Government done?

Looking back on the situation of two years ago when the Government established the Centre for Food Safety (CFS) in 2005, we did have great expectations of it. The Government also pledged that after the establishment and commissioning of the CFS, it would be able to help Hong Kong people get supply of good food which should include fish, vegetables and fruits, and so on. However, from what has happened during the past two years, the Government has not only failed to ease the people's doubt about food safety, but on the contrary, more and more evidence and surveys show that the people are increasingly worried about food safety.

I would like to quote some figures to show how concerned we are about food safety and to what extent we have attained food safety. Recently, according to a report in March, the Guangzhou Food Safety Information Centre discovered that various chemicals were added to 12 types of fruits commonly consumed by the people. You would definitely be shocked after I have read out such information. Among these fruits, lime powder is added to green mangoes to make them look better; ethephon solvent is added to unripe grapes to make

them turn purple; sulphuric acid and acidic solvent are sprayed onto longans to make them look brighter in colours; lychees are soaked in sulphuric acid; oranges are polished with wax; excessive chemicals are added to apples to make them grow bigger and look redder in colour; ammonia and sulphur dioxide are used to quicken the ripening process of bananas. And excessive amounts of ripening agent, inflation inducers and highly toxic pesticides are used on water melons. Wow, one could not help feeling astounded at hearing all these.

How did the Government respond to us? The Food and Environmental Hygiene Department (FEHD) pointed out that, first, they would find out what the circumstances were; second, they told us that they had conducted chemical tests and tests for pesticides and heavy metal colouring matters on 880 fruit samples during the past one year. All samples passed the tests. 880 samples — I do not know how many fruits are imported into Hong Kong, but 880 samples are definitely a very low figure. If the Government thinks that this figure alone is sufficient to convince everyone that it has already done its best in the market to ensure our food safety (including fruits), I think the Government is simply joking.

It is pointed out in the original motion and by many colleagues that what Hong Kong needs now is a more mature and comprehensive food safety law. The problem lies in the Government's responses in this regard. Every time, the Government would claim that we already have adequate laws. Actually what it refers to is just some inadequate or immature provisions in the Public Health and Municipal Services Ordinance. Why does the Government think that there is no need to enact a food safety law, or that the time for its enactment has not come? But, as a matter of fact, after many discussions, the Government still cannot make us accept its viewpoint.

Secondly, regarding the food importer registration scheme, in fact, it is still not accomplished to date. Although the Government does intend to operate a voluntary registration system for certain food categories, including seafood, poultry eggs, and so on, I believe even if this is implemented, it will not really help us.

All the processes of controlling food standards in the whole world start from the sources to the tables. Perhaps we may need to identify some critical point control for implementation. We only need to focus on several points; first, the sources and production of food; second, testing and importation centres; and third, the sale channels. The problem is, we do not feel that we have adequate protection at these several points.

First, of course, we are happy about some new developments and new practices implemented with regard to the places of production. The new practice is to ensure that the food is produced in designated farms. However, the problem is: Such a practice is only applicable to certain vegetables. With so many different types of vegetables, such a practice cannot help us at all.

Second, regarding the existing testing and certification centres, with the assistance of relevant mainland officials, a new testing centre will be established in Nanshan. However, according to some mainland officials, there are still some inadequacies with this new testing centre. They also undertook to prohibit certain actions that are against the law. I am very happy about this. But the problem remains: In these testing centres and designated farms, how much participation do our officials from the FEHD and CFS have? How can they make use of such a system or practice to ease our worries? They have not provided us with adequate clarification in this regard.

The most important part is the food recall law, which has been discussed for a long time. Every time when some incidents happen, and when we beg our Government most earnestly to order the importers or distributors to recall the problematic food, it would just give them an advice. Why?

We have discussed this issue for so many years. A colleague said just now the discussion must have been going on for 10 years. I believe, if we bother to look up the documents, we should be able to confirm that it must be more than 10 years. Now, the entire Legislative Council has been waiting for too long. We very much hope to see that this piece of legislation can be discussed and implemented. However, the Government remains undecided after prolonged discussions. If the Government goes on adopting such an attitude in handling this issue, I believe Hong Kong will never have food safety insofar as live and fresh food is concerned. I so submit. Thank you, Deputy President.

**MR WONG TING-KWONG** (in Cantonese): Deputy President, in response to the recent spate of food safety incidents, the Mainland has implemented a number of new initiatives to perfect the inspection and quarantine systems for live and fresh food supplied to Hong Kong, thus making the listed or registered breeding farms as the first targets of implementing control measures. And now, the authorities have also introduced the additional requirements of source label

identification and lead-seal arrangements for products. So measures that should be implemented at the sources of supply have mostly been adopted. However, it seems that Hong Kong has acted much slower and has not made any matching arrangements. It is not until the recent months that the Health, Welfare and Food Bureau has started to draft a food safety law which may not be ready for tabling until the second half of the year. The new law is understood to include, as the first step, the introduction of a food importer registration scheme to enable the authorities to keep track of the sources of food supply.

In fact, the registration system is an important element of the entire food safety control system. Therefore, today I would like to discuss the importer registration scheme. In the '80s of the last century, there was the incident of contaminated vegetables. The Mainland and Hong Kong thus reached a consensus that all leafy vegetables supplied to Hong Kong must be exported from listed farms, or as commonly known, the Accredited Farms. But such a requirement does not apply to fruits and melons, and so on, which are commonly known as "hard vegetables" to the trade. And in Hong Kong, since there are no legal provisions requiring such vegetables to be quarantined on importation, some unscrupulous merchants would mix some leafy vegetables from non-listed farms with hard vegetables that are being transported by vehicles, thus causing the so-called "problem of smuggled vegetables".

Besides, at present there is no control on vegetables in transit. Vegetables grown in the Mainland but exported to other places via Hong Kong are not required to be exported from listed farms. Hence, unscrupulous merchants would secretly sell such vegetables in the Hong Kong market. In selling these so-called "export vegetables" in Hong Kong, they are in effect smuggling vegetables from non-listed farms into Hong Kong for sale. Apart from making illicit profits, these unscrupulous merchants are at the same time jeopardizing the health of Hong Kong people as such vegetables might not be supplied by listed farms, thus increasing our food safety risks. Should food poisoning incidents occur, it would be very difficult for us to trace the origins of such vegetables as no registration system is in place.

The DAB has conducted an opinion survey specifically on the issue of food safety control. The respondents are asked: After the mainland authorities have implemented new measures, do they have the confidence that such measures can achieve the desired results? Over 75% of the respondents said they had no

confidence; of them, nearly 40% explained that it was attributable to the fact that the food smuggling problem between the two places had not been properly tackled. Besides, 85% of the respondents agreed that the food inspection and quarantine procedures should be stepped up, including the implementation of import quarantine and a food importer registration scheme.

The reliance on such mainland measures alone is inadequate. We should do our own job properly in ensuring food safety. As Chief Executive Donald TSANG admitted in a Question and Answer Session held in January of this year, the SAR Government had not done adequately in the food safety control procedures. He even put forward a new control concept by requiring all food importers to register under a scheme; and in the meantime, they should possess the certificates issued by food exporting countries, so as to certify that their food comply with the safety standards in Hong Kong.

As such, we hope that the scope of control can be extensive enough, and that the food importer system and the food safety law requiring the attachment of hygiene certificates to all food supplied to Hong Kong can be implemented as soon as possible. We believe that the implementation of a registration system as well as the solving of the problem of illegal import of live and fresh food will provide very great protection to the food safety of Hong Kong people. Therefore, we should pay close attention to all the new control measures to be implemented in both Hong Kong and the Mainland, and we should also assess the impact of such measures on the operations of the trade. We should also keep in close touch with people of the trade, so that, apart from making them understand the details of the measures, we should also listen to their opinions and assist them in adapting to the new measures.

It is understood that the new law will confer on the Director of Food and Environmental Hygiene the authority to recall food. After tests have been conducted to confirm that there are problems with certain types of food on sale in the local market, or when food safety incidents have occurred overseas, the department may recall such food until it is officially confirmed that the products concerned are safe for sale again. It would be highly controversial if the trade is required to stop selling products that have not been confirmed to have problems, especially when the period of suspension of such products from the market is unknown. Apart from causing unfairness, it would also incur financial losses. Therefore, I agree that the Government should adopt an understanding attitude in considering the issue. While the Government should



have special regard to the losses that may be incurred by the trade, it should also provide them with assistance, so as to help them in overcoming their difficulties.

With these remarks, Deputy President, I support the original motion and the amendments.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): The proposing of the motion on safeguarding the safety of live and fresh food is actually a response to the many incidents involving the import of live poultry or fish with toxic substances from other places, especially the Mainland. In this connection, I have observed two problems. First, I think our compatriots in the Mainland should find all this very regrettable. And, I also find them very pitiable. We are saying in this Chamber that if the foodstuffs from the Mainland are not hygienic, they must not be imported into Hong Kong. When it comes to motions on the 4 June incident, the President rules that we, as a local government, must not comment on things connected with the Central Government. We are lucky because the topic under discussion involves only our counterparts, that is, it is all about one local government talking to other local governments — the Hong Kong Special Administrative Region talking to Guangdong or other provinces. But the President has never ruled that the issue cannot be debated in this Chamber; she has only ruled that there must be no motion debate on the issue, so I can continue to discuss the issue.

The issue has enabled us to notice that since the system on the Mainland is autocratic, since powers are abused, since powers are excessive, since there is collusion between the government and business, and since some people abuse their powers to further personal interests, there is simply no protection for many of the foodstuffs eaten by our mainland compatriots, including live and fresh food. This problem has spread to Hong Kong. The other day, I watched a Cable Television programme on the import of fish. It was said that fish import was subject to regulation and the fish taken from fish ponds must undergo random inspections under supervision. But the camera crew observed that once the fish were taken from a fish pond, they were immediately mingled with some prepackaged fish and transported to Hong Kong. The camera crew even shot a scene which showed that the inspection conducted prior to importing the fish into Hong Kong was all farcical and haphazard. Some selected samples were simply

not inspected. Things were better after the importation of the fish into Hong Kong because there was more manpower here. But still, the inspections could not achieve much. The entire process was like that.

From the same programme, I also saw that one day, the wholesale of live fish and poultry was stopped and there was short supply in the Hong Kong market. I saw that when Hong Kong journalists telephoned the relevant mainland units, they simply replied in a couldn't-care-less manner, saying that since Hong Kong was so troublesome and inspections had to be so strict, they were unable to cope, so export was stopped altogether. They even hinted that they should not be blamed. Buddy, had they behaved like this in Hong Kong, they could not have survived. They were government officials. But, buddy, they still had the face to say to Hong Kong people, "Well, your new regulatory system is so stringent. Sorry, it will be very difficult for us to do any business. It is very difficult to conduct the kind of required inspections. So we are not going to sell you any food." After viewing the programme, I started to wonder what kind of people they were. I really want to complain against them to the letters and visits office of the National People's Congress.

All is very simple. In Hong Kong, their counterpart is the Secretary. When the Secretary meets with a low-ranking government official in the Mainland, can he say anything? They will not deny anything. They will say, "We are arrogant because we are rich. We are arrogant because we are government officials." Therefore, I will not blame the Secretary. During the SARS outbreak, everyone knew that many mainland people rushed to buy white vinegar, which was priced at \$100 per bottle. Why did they do so? Did they want to boil the vinegar? Yes, it was indeed the case, for they wanted to prevent SARS. When our television stations telephoned the relevant mainland authorities, they said, "Yes, there is big trouble here." But the then SAR chief and the lady who is now working for the World Health Organization both said that it was alright and there was no cause for panic. It was again a reflection of the same logic, that is, the logic that we as a local government must not discuss affairs of the Central Government. It explains the subsequent mess and why we were so badly hit. Our Motherland recorded the greatest number of SARS patients in the whole world, and Hong Kong SARS patients had the highest average death rate.

This is a problem with the system. I will not blame the Secretary and our civil servants. Yes, they can be criticized for many things, but when it comes

to bilateral talks, we must remember that the system on the Mainland has already collapsed. There is simply no protection for the food eaten by our mainland compatriots. When foodstuffs are exported to Hong Kong, the situation will be slightly better because there is monitoring in Hong Kong. But during bilateral talks, there will be no equal status because they will tell themselves, "What can you do even when we behave like this? Your legislature is not permitted to criticize our side. And, what can your government officials say anyway? If you go on making trouble, we will just terminate your substantive appointments." Honourable Members may still remember the trouble surrounding the appointment of Secretary Dr York CHOW, which gave Mr TUNG such a hard time. They simply said, "Since Hong Kong did not consult me first, I will delay processing York CHOW's appointment, just to make you a laughing stock of the whole world. They will only laugh at TUNG Chee-hwa, not the Central Government."

This is a paternalistic system, showing that they are arrogant because they are powerful and rich. What can we in Hong Kong still hold onto? That is why I often question why the opposition camp and the pan-democratic camp, "What is the point of continuing to talk about democracy and human rights?" This incident can show us the whole situation. Even though our system is perfect, once the Mainland issues an order, once the Mainland orders that export shall stop if Hong Kong continues to conduct inspections, there will be short supply in Hong Kong, leading to rising prices. Hong Kong people are selfish after all. Once they realize that prices will rise, they will at once want to resume food import as soon as possible. Whether anyone will thus die of poisoning is a separate matter. They will think that they may not necessarily be the victims.

Honourable Members, once we choose to kneel down, the situation will certainly be like this. I can remember that during the anti-British movement, the Mainland once said that if they continued to behave in the same way, there would be no further supply of Dongjiang water, non-staple food and even plastic slippers. They really said something like this at that time. I told myself at that time, "What's wrong with them? How can they do something like this?" But since I supported the anti-British struggle at that time, I just remained silent.

Speaking of today again, I must say that as long as one-party dictatorship continues in the Mainland and the Hong Kong SAR Government remains unchecked and elected by a handful of people, the food inspection system which is based on mutual tolerance and monitoring will certainly vanish.

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

**MS AUDREY EU** (in Cantonese): Deputy President, food safety problems in Hong Kong, such as contaminated vegetables, fish, eggs and meat, are increasingly common. And the situation is grave. I have read an opinion poll recently, which indicates that the public finds the hygiene level in Hong Kong very satisfactory. But I think that the tolerance of Hong Kong people is really amazing. With so many food safety problems surfaced, the people of Hong Kong still find our hygiene level.....maybe they thought it was referring to the hygiene of streets, not the hygiene of food, and thus found it acceptable.

Every week, I will have dinner at my mother-in-law's home. Every time she will apologize to me and say that she is sorry for not being able to cook something special because she does not know what to buy for all the food are reported as poisonous, and she does not know what to eat. Although we always boast Hong Kong as a world city, issues as basic as food safety are still not properly addressed. We have been promised that legislative work will be carried out. I am looking at Secretary Dr York CHOW now and I believe that he will continue to be in office after 1 July. If he does not need to take charge of the welfare portfolio, will his amount of work be lessened? Does this mean that he can expedite the legislative work on food safety? I do not know.

However, recently, numerous news reports have indeed reflected that the problem is worsening and that the work being carried out in this area is still insufficient.

From the news reported in the *Oriental Daily News* we can see the loophole of the mainland labelling system for vegetables supplied to Hong Kong. Many vegetables from the Mainland can be supplied to Hong Kong without undergoing inspection. They can be transported to Hong Kong freely like a "gate-less chicken cage" — or I should say a "gate-less vegetable hold", not a "chicken cage".

Since the implementation of the labelling system for vegetables to be supplied to Hong Kong on 1 April, during this half-year transitional period, vegetables from unregistered supply farms, having passed the pesticide examination at designated distribution centres in Shenzhen and obtained a pesticide usage report, can be transported to Hong Kong for sale. However, it

had been discovered by reporters that only rough or even naked-eye examinations were carried out by officers at the distribution centres. The examinations, which should originally take 30 minutes, took only three minutes, and after that the report was issued. Worse still, when the vegetables reached the Cheung Sha Wan Wholesale Vegetable Market, there was no one to inspect whether or not the vegetables were attached with labels or reports, and the vegetables were allowed to go into the market.

When the situation was reported in the newspaper, experts of the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China were sent to Shenzhen to carry out stringent inspection, but on the Hong Kong side, monitoring work was not stepped up. In the past month, relevant officials in Hong Kong did not take the initiative to follow up the situation in the Mainland, except complimenting bureaucratically during the visit to the distribution centre that the centre was highly professional and stringent. Despite the report was issued by mainland authorities, inspection was not carried out on the Hong Kong side when the vegetables reached here. Our Government, no matter what reasons it might offer, has to take the blame. At present, the inspection of imported food is hasty. Other than the example of vegetables, there is freshwater fish.

In end of February this year, a television station exposed the smuggling of freshwater fish to Hong Kong, and the whole process was video-taped. They discovered, at the wholesale aquatic products market in Huangsha, Guangzhou, that some merchants had been transporting freshwater fish from unregistered supply farms to Zhongshan pier, and the fish were then shipped to the Cheung Sha Wan Wholesale Food Market in Hong Kong together with the quarantined freshwater fish from registered supply farms. One of the aquaculture companies even said that they had been using this method to smuggle fish into Hong Kong for over two years. It has also been reported that Hong Kong has long become a midway transit centre for distributing unregistered freshwater fish with at least a few 10 000 kg of fish being smuggled into Hong Kong every day and loaded at smuggling black spots like Butterfly Bay and Castle Peak Bay.

The authorities in Hong Kong and the Mainland have along maintained that there is stringent regulation on freshwater fish supplied to Hong Kong and that all of them are from registered fish farms. However, why can these freshwater fish pass the control points at Guangdong and Hong Kong so easily?

In fact, the two typical examples above reflect the inadequacies in the work on safeguarding food safety in Hong Kong. The system is originally meant to ensure that vegetables and freshwater fish supplied to Hong Kong are up to standard, but it has become a huge loophole through which dangerous foodstuffs can become legalized due to oversight in monitoring, insufficient inspection and perfunctoriness. The public is being further misled to think that the food items concerned have passed the safety examination and can be eaten safely, but unexpectedly these "examined" food are not safe to eat either. The system, which exists in name only, undermines public confidence in consuming live and fresh food.

I hope the officials concerned can truly act up to their promise and table to the Legislative Council within the next half year their proposed monitoring standards on pesticide residues and complete public consultation in 2007-2008 on the food safety law. Legislation on food safety should brook no delay and the same is true of environmental protection. The public and the Legislative Council share a great consensus on these two issues, that is, the Government should do more. The Government always acts slowly in taking forward legislation which it has promised. For instance, the legislation on plastic bag levy proposed recently should originally be completed in this Legislative Session, but it was only tabled now, and there is no way it can be passed until next year. Moreover, the Government has also undertaken that in relation to tyres, electronic and electrical products, rechargeable batteries, packaging, and so on.....Deputy President, I do not think we can finish all these within this Legislative Session. I am thus very worried that we do not know when Secretary Dr York CHOW can reach the legislative stage of the food safety law after completing the public consultation.

We have to eat at least three meals a day, and even for fruit, we very often have to eat it at breakfast. I thus hope that the Secretary can expedite the work on safeguarding the safety of live and fresh food so that we can have a better and healthier life.

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

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, you may now speak on the amendments. You have up to five minutes to speak.

**MR TAM YIU-CHUNG** (in Cantonese): Deputy President, Mr Vincent FANG and Mr Fred LI have separately moved amendments to my original motion. I would like to respond to the amendments here.

At present, some live and fresh food, such as vegetables and live sea fish, are not necessarily distributed through wholesale markets, and it may thus be difficult to trace the source of the produce and the sales records. Moreover, based on experience from monitoring live chicken, a centralized wholesale market can provide an extra level of verification and thereby further ensure that produce arriving at retail points is safe. Therefore, we support that live and fresh food be distributed through wholesale food markets supervised by the Government.

Secondly, regarding providing support to the trade, in food safety incidents happened in the past, such as incidents of banning live chicken from importing into Hong Kong because of the avian flu and stopping the import of freshwater fish from the Mainland earlier, the related wholesale and retail trade has suffered grave financial losses. The Government is thus duty-bound to consider how to provide the trade with suitable support and assistance. One of the feasible solutions is to set up an emergency relief fund for assisting the trade in tiding over financial difficulties during suspension of their business.

Thirdly, in relation to assisting Hong Kong businesses which invest in agricultural and fishery produce in the Mainland, the DAB holds that, in terms of assistance, priority should be given to local farmers who have returned their licences under the scheme for voluntary surrender of farm licences, so that they can maintain their living by reverse-exporting the produce they have produced in "agricultural test bases" in the Mainland to Hong Kong. As for the detailed arrangement, the number of livestock for reverse-export should be limited to the number of livestock they used to rear in Hong Kong and should be done so as livestock quotas for Hong Kong, so as not to affect the sales of other supply farms in the Mainland as well as not to take up the livestock quotas for export of the Guangdong side. The scope of assistance proposed by Mr Vincent FANG is larger, but we do not object to that.

With respect to Mr Fred LI's proposal of expanding the Man Kam To Food Control Office and promoting organic farming, they are in line with the direction advocated by the DAB all along, we thus will support these amendments.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Deputy President, I thank Mr TAM Yiu-chung for proposing a motion on safeguarding the safety of live and fresh food, and I also thank Members for their valuable opinions. I remember that a similar topic was debated in the Legislative Council early this year. In a Question and Answer Session of the Chief Executive in the beginning of the year, some Members also raised the issue of food safety and from this, we can see the importance that members of the public have attached to food safety. In response to public aspirations, the Chief Executive, colleagues of the Health, Welfare and Food Bureau as well as myself have, on various occasions including meetings of the Legislative Council, meetings of the Panel on Food Safety and Environmental Hygiene, replies to the media, and other public occasions, stated the Government's new regulatory concepts on food safety as well as the series of reforms to be implemented in the future on the legislation and institution for safeguarding food safety, including the drafting of a food safety law, regulation of food importers and distributors, formulation of more comprehensive food safety standards, and enacting legislation to enable the authorities to order the suspension of sale and recall of food by the industry. In his motion today Mr TAM Yiu-chung has also included these initiatives, which are entirely consistent with the objective of the specific work plans announced by the Government.

(THE PRESIDENT resumed the Chair)

Hong Kong is an international metropolis with a large population but a scarcity of land. Over 90% of our food is imported from various parts of the world. We are also the world-acclaimed "Gourmet's Paradise", where a wide variety of food is imported from places all over the world. We have salmons from Europe and North America; beef from China, Australia, New Zealand, the United States, Canada and Japan; fruits and vegetables from North America, poultry meat from South America; and food from various parts of Asia with which we are familiar. Insofar as the regulation of food is concerned, we must have regard to food safety and at the same time ensure a diversified and stable supply of food in Hong Kong, in order to meet public demands and aspirations. These factors have made safeguarding food safety in Hong Kong a unique and most complicated task.

With a great majority of food in Hong Kong being imported, it is necessary for us to establish close ties with the relevant authorities of the food



supplying regions, so as to ensure that they have taken effective measures from the source of food production to the entire food production process before exporting their food products to Hong Kong. To this end, we have all along maintained close liaison with food safety agencies overseas and in the Mainland. Recently, I have visited the Netherlands, Belgium, Germany and the European Union headquarters and met with the relevant officials to understand the measures and practices that they have adopted for regulating the food industry and food labelling, so that we can map out plans for future regulatory arrangements in Hong Kong. Meanwhile, we also met with the State General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) and Guangdong Food and Drug Monitoring Authority in the middle of this month and discussed with them the safeguards for the safety of mainland food supplied to Hong Kong as well as the safety of food for domestic consumption in the Mainland respectively. The opportunity was also taken to explain the new measures on food safety to be implemented in Hong Kong in the future, with a view to promoting mutual understanding. I wish to point out that the measures mentioned in Mr TAM's motion relating to the control of vegetables, fruits and melons, and freshwater fish exported to Hong Kong are planned, co-ordinated and implemented through the concerted efforts of the Government of the Hong Kong Special Administrative Region (SAR) and the inspection and quarantine departments in the Mainland with the objective of enhancing safeguards for the safety of mainland food supplied to Hong Kong. This will further promote the traceability of food and give play to the concept of "farm to table", thereby enhancing protection.

As Members can see, the Centre for Food Safety (CFS) is never late in its response and it often takes the initiative to conduct inspections which in turn enable it to identify problems. For example, yesterday, that is, three to four weeks before the Dragon Boat Festival, the CFS conducted tests on samples of rice dumplings and efficiently traced the origin of a sample containing Sudan dye. This has also reflected the importance of the work of the CFS.

Here, I must emphasize that insofar as safeguarding food safety is concerned, while the Government certainly has a pivotal part to play, self-discipline and co-operation of the industry is also indispensable, and this is actually a world trend. I will speak on this point in greater detail later on.

In response to the other points made in Mr TAM's motion, I reiterate that the Government deeply appreciates that food safety is closely related to public health and so, particular importance has been attached to safeguarding food

safety. We are in the course of drafting a food safety law. With a new mindset, we will strengthen the control of various links and participants of the food supply chain. The new legislation will be designed in a way that food requiring regulation can be incorporated into the scope of regulation through the most expedient channels in the light of changes in the circumstances and needs. In addition, we have announced that legislation will be enacted to regulate food importers, requiring them to keep records of food origins and outlets of distribution to facilitate the tracing of the sources of food. Besides, we will also require high-risk food items to be accompanied by health certificates, and this is consistent with the need as pointed out by Mr WONG Ting-kwong earlier on.

Moreover, the legislation to be enacted on food safety will be multi-faceted, including the regulation of such foods as poultry eggs and vegetables which are of public concern. Legislation on the regulation of poultry eggs will be submitted to the Legislative Council in due course. After the legislation has officially come into effect, all foods must be imported by registered importers, or else such import will amount to a breach of law. Furthermore, we are in the process of drawing up standards for the regulation of pesticide residues in food. The expert group concerned is conducting studies on the maximum residue limits of pesticide and working on the legislation. It plans to finalize the legislative proposal for submission to the Legislative Council within six months.

In the next term of the Government, a series of legislative amendments will be introduced to, among other things, amend food safety legislation relating to veterinarian drug, introduce a nutrition information labelling scheme for prepackaged food, and also prohibit abstraction of seawater from polluted areas for keeping fish intended for human consumption.

Mr TAM also mentioned that some mainland laws and regulations on food have a significant bearing on the operation of the local food industry. In fact, we have constantly maintained liaison with mainland food departments through the existing channels, in order to gauge the impact of laws or regulations made by these departments on the local food industry and disseminate the relevant information to the industry through various channels, so that the industry will know what control measures have been taken at the food origins. A specific example is that a link with the webpage of the AQSIQ has been put on the CFS website to provide the industry with such information as the list of vegetable farms and collecting/processing establishments, poultry egg farms and poultry

egg processing plants, chilled pork processing plants and associated pig farms, which are officially approved for supplying food to Hong Kong, so that the industry can make purchases from up-to-standard mainland suppliers. In view of recent incidents of the presence of paralytic shellfish poison in shellfish, which has dealt a severe blow to the industry, we are actively working with the AQSIO, and we hope to make public as soon as possible a list of mainland culture farms of shellfish and aquatic products which have been approved to export their products to Hong Kong, in order to facilitate purchases by the industry.

I very much agree with Mr TAM's proposal that the CFS should strengthen its liaison with the industry. Since its establishment the CFS has all along attached importance to communication with the industry. For this reason, consultation forums have been organized regularly to provide a platform for exchange of views on food safety issues with the industry and discussion on topics relating to food safety regulatory measures as well as the views of the industry on various risk communication activities. Four forums have since been conducted in which many food trade associations, food manufacturers, food importers and wholesalers, supermarket operators and retailers have actively participated.

In implementing concrete measures, we have maintained close communication with the industry. For instance, in order to assist the industry in adapting to the regulation of poultry eggs as early as possible, we have introduced a voluntary enrolment scheme before the enactment of legislation, and information on poultry egg importers/wholesalers/distributors who have enrolled under the scheme has been uploaded onto the CFS webpage for easy reference of the industry in making purchases. We will also organize seminars on food safety regularly to facilitate discussion on food safety matters in the industry and provide the latest information on food safety through a quarterly publication, *Food Safety Express* and monthly periodical, *Food Safety Focus*.

On the promotion of local agricultural and fishery products, the Government has all along played an active role. In fact, given such factors as geographical location and social development, the local agricultural and fishery industries can only focus on high value-added production. This is why we have taken a market-led approach and endeavoured to assist the industry in adapting to the trend of modernized agricultural and fishery production practices with emphasis on enhanced productivity, safety and environmental protection. Fundamental facilities and technical support are also provided to encourage the

industry to seize the opportunity of developing new markets. For example, to meet the market demand for quality and safe food, assistance has been provided to the industry to develop techniques of organic farming and controlled-environment greenhouse farming, and new varieties have been introduced to improve the quality of local agricultural and fishery products. Quality species being promoted to farmers in recent years include jade perch, sweet corn, white bitter cucumber, organic strawberry, organic watermelon, organic chrysanthemum, and greenhouse production of rock melon, which are very well-received in the market, and the demand for these products often exceeds the supply.

Certainly, quality production procedures and management are the prerequisites of quality products. For this reason, the Agriculture, Fisheries and Conservation Department (AFCD) introduced the Accredited Farm Scheme and Accredited Fish Farm Scheme in 1994 and 2005 respectively with the objective of improving the production techniques of the local agricultural and fishery industries and enhancing the quality of their products, in order to ensure that the products are competitive in the local market. There are now about 180 local farms and 244 retailers participating in the Accredited Farm Scheme, and 65 fish farms have been registered as accredited fish farms. With the concerted efforts of the Government and the local agricultural and fishery industries, local agricultural and fishery products have earned a good reputation in the local market. For instance, in the two-day Farmfest, an annual event organized in the beginning of the year in Mong Kok, there was participation from about 130 local agricultural and fishery product traders and over 120 000 visitors were attracted. Some products were even sold out before the end of the Farmfest, showing a keen demand for local agricultural and fishery products among the public.

I will now respond to the amendments proposed by Mr Vincent FANG and Mr Fred LI.

Firstly, Mr Vincent FANG proposed that all live and fresh food to be distributed in the Government's wholesale food markets. I think the key policy objective of the Hong Kong Government in the regulation of food is to safeguard food safety and ensure stable supply and diversity. Besides, we should also allow the industry to operate freely and refrain from excessive intervention. If the industry sees the need to set up wholesale markets for distribution of food, they can arrange for these markets on their own according to the special needs of the

operation of the industry, rather than using public coffers to pay for the expenditure incurred for constructing and managing such markets. The Government will enact legislation to require food importers and distributors to keep records of the sources of food and outlets of distribution, with a view to setting up an effective mechanism for tracing the sources of food.

Moreover, Mr FANG proposed the setting up of an "emergency relief fund for the live and fresh food industry" to provide, in the event of adversity in the industry, emergency assistance to the affected trades, so as to tide them over the difficult times. In my response to the motion on "Relief measures and compensation policies for the live poultry trades" moved in the Legislative Council on 29 November last year, I already said that the Government would conduct studies and decide whether or not reference should be made to loans made out to the trades in the past, in order to help the live poultry trades which have been chronically affected tide over the difficult times. However, we must consider carefully the feasibility of the loan scheme and its details, as well as the proposal made by Mr FANG earlier about including participation from the trades. My colleagues are looking into the feasibility of the scheme and we hope that a report can be submitted to the Legislative Council as early as possible.

Mr FANG also advocated that the Government should assist Hong Kong businesses to invest in the agricultural and fishery industries in the Mainland and obtain priority for reverse export of their standards-compliant products to Hong Kong. Given that the reverse export of products to Hong Kong is a state policy, we submitted our views in writing to the relevant mainland authorities in April last year, suggesting that this proposal should be actively taken into consideration on the principle that the state policy and responsibilities in respect of external trade are not violated. Seizing the opportunities that arose later, we followed up these issues with the Mainland at a number of meetings and were informed that the Mainland was actively studying these issues. We will continue to follow up these issues with the relevant departments.

As for Mr Fred LI's amendment, as I have given an account of the support provided by the Government to the local agricultural and fishery products, I am not going to repeat the details here.

With regard to improving the facilities at border checkpoints, so as to step up inspection of imported food, we agree that in the long term, studies should be

conducted on the expansion of inspection facilities at border checkpoints, in order to strengthen the inspection of live and fresh food imported into Hong Kong. A high-level steering group has been set up under the Health, Welfare and Food Bureau to study various proposals on the improvement of food inspection and control at border checkpoints while studies are conducted jointly with the Mainland on the introduction of new control measures, with a view to strengthening the control of the transportation of food. These new measures also cover the control measures mentioned in Mr TAM's motion.

To sum up, food safety hinges on the participation from the Government, the industry and the public. To successfully impose regulation on the entire food production process, the regulatory authorities are certainly duty-bound to ensure that effective monitoring and regulatory measures are implemented in all major segments of the process, but the industry also has a crucial and fundamental role to play in ensuring food safety. For example, importers have the duty to import food through channels with a good reputation and ensure that the food is accompanied by requisite health certificates on import, and keep invoices and records for inspection purposes. Retailers and catering establishments also have the duty to import food from importers or wholesalers with a good reputation and maintain invoices or records for inspection. They should properly label their food and indicate the origins of food as required by law and the regulatory authorities, and also provide accurate information on the sources of the food to the regulatory authorities.

If we look at the European countries, the United States, Australia and New Zealand, we can see that safeguarding food safety is made the first and foremost task of the food industry under the law. The European Union pointed out in a review of food safety laws in 2002 that the food industry has a fundamental role to play in safeguarding food safety and the industry must co-operate with the relevant authorities in order to reduce the impact of food incidents on the public. Other major food suppliers, such as Britain, Australia and New Zealand, have, by enacting legislation and implementing measures, professed that the food industry has fundamental responsibilities in safeguarding food safety.

For instance, the Food Safety Act in Britain has laid down the framework for all food-related legislation and the responsibilities of the food industry are also covered. The Australia New Zealand Food Standards Code provides for the requirements for safeguarding food safety, such as the requirement of

accurate food labelling, the limits of additives in different kinds of food, and so on. The Sale of Food Act and the Food Regulations in neighbouring Singapore have made detailed provisions for compliance by food importers and the industry. Moreover, laws have been enacted in many places to set out the responsibilities of importers: In Singapore there are the Wholesome Meat and Fish Act and Control of Plants Act, which require importers of meat and fish and their products, vegetables and fruits to register with the relevant authorities and to produce an import permit for each consignment of goods; and the Agri-Food and Veterinary Authority in Singapore also requires importers to produce the health certificates. In Britain, the Products of Animal Origin (Third Country Imports) Regulations stipulates that the products concerned can only be imported via specified border checkpoints and that such products must be accompanied by documents of proof for inspection. The Imported Food Control Act in Australia provides that the Australian Quarantine and Inspection Service has the power to require importers to apply for an import permit for food to be imported and also conduct inspection on individual types of food and require the production of health certificates. These overseas examples show that insofar as safeguarding food safety is concerned, the food industry, especially the importers, have the fundamental responsibilities in safeguarding food safety.

With regard to measures targeting the public, from the information that I obtained during my visit to various European Union countries, for the purpose of safeguarding food safety, apart from enhancing government regulation and affirming the responsibilities of the industry, we can also prevent undesirable food from entering the market by stepping up education for consumers and conferring powers on them. Here, I would like to make an appeal to members of the community for their participation and assistance in our work to safeguard food safety, such as refraining from purchasing food through illegal channels or from unknown sources and refraining from smuggling food or poultry into Hong Kong.

Madam President, colleagues of the Health, Welfare and Food Bureau, the Food and Environmental Hygiene Department and the AFCD have been actively making preparations for the future work and legislation. In the next few years, the new term of the Government will give effect to a number of food safety laws and regulations one after another, so as to facilitate the aligning of the food safety control framework in Hong Kong with the latest international trend. Given the rapid development of food production and processing technologies, new types of

food will continue to increase in number. While this will mean more choices to members of the public, food safety control is set to face new challenges. It is only through tripartite co-operation of the Government, the industry and the public that we can effectively and continuously enhance the standard of food safety control as a whole.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Mr Vincent FANG to move his amendment to the motion.

**MR VINCENT FANG** (in Cantonese): President, I move that Mr TAM Yiu-chung's motion be amended.

**Mr Vincent FANG moved the following amendment: (Translation)**

"To add "the Hong Kong SAR Government has indicated that legislation will be enacted within the current year to strengthen the control of imported poultry eggs and cultured aquatic products, while" after "That, as"; to add "so far" after "however,"; to delete "complementary" after "not yet made any"; to add "and complementary management measures" after "import quarantine arrangements"; to add "and market management" after "Hong Kong's import quarantine"; to add "set of comprehensive live and fresh" after "enacting a"; to add "according to international practices and local needs," after "food safety standards"; to add "as well as implementing the arrangement for all live and fresh food to be distributed in the Government's wholesale food markets," after "border control points,"; to add "while enacting the above legislation, setting up at the same time an emergency relief fund for the live and fresh food industry to provide, in the event of adversity in the industry, emergency assistance to the affected trades, so as to tide them over the difficult times;" after "imported live and fresh food;"; and to add ", and assist Hong Kong businesses which invest in agriculture and fishery industries in the Mainland in obtaining priority for reverse export of their standards-compliant products to Hong Kong for sale in the market" after "agricultural and fishery products"."



**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Vincent FANG to Mr TAM Yiu-chung's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): As Mr Vincent FANG's amendment has been passed, Mr Tommy CHEUNG will withdraw his amendment to Mr Fred LI's amendment.

**PRESIDENT** (in Cantonese): Mr Fred LI, as Mr Vincent FANG's amendment has been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which has been circularized to Members. When you move your revised amendment, you have up to three minutes to explain the revised terms in your amendment, but you may not repeat what you have already covered in your earlier speech.

**MR FRED LI** (in Cantonese): President, I move that Mr TAM Yiu-chung's motion as amended by Mr Vincent FANG, be further amended by my revised amendment.

In fact, what I propose to amend is very simple. It consists of only two points, to which the Secretary will not object. The first point is to study the expansion of the Man Kam To Food Control Office, and the second point is to assist the local organic farming. I thus believe Members will support my amendment, so I will not claim a division. Thank you, President.

**Mr Fred LI moved the following further amendment to the motion as amended by Mr Vincent FANG: (Translation)**

"To add ", as well as studying the expansion of the Man Kam To Food Control Office, and stepping up random inspection of vehicles carrying vegetables and fruits to reduce the chance of vegetables and fruits from unknown sources being brought into Hong Kong" after "the safety of imported live and fresh food"; and to add "and further promote organic farming, including rendering more technical support to farmers and assisting the trade in expanding the market," after "breeding farms, "."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr Fred LI's amendment to Mr TAM Yiu-chung's motion as amended by Mr Vincent FANG, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, you may now reply and you have one minute 11 seconds.

**MR TAM YIU-CHUNG** (in Cantonese): President, as Mr Fred LI said he did not wish to claim a division, in other words he wished to save Members' time, so I will not use all of the one-odd minutes either. First of all, I wish to thank Members for speaking on the motion. In fact, food safety is everyone's concern because the food we eat will go into our body and we definitely do not wish to eat unsafe food. We thus should work together and do a better job in food safety.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr TAM Yiu-chung, as amended by Mr Vincent FANG and Mr Fred LI, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 30 May 2007.

*Adjourned accordingly at nineteen minutes past Eight o'clock.*

## UNSOLICITED ELECTRONIC MESSAGES BILL

## COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce, Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) By adding –</p> <p>“(1A) Subject to subsection (2), this Ordinance shall come into operation on the day on which it is published in the Gazette.”.</p> <p>(b) In subclause (2), by deleting “This Ordinance” and substituting “Part 2, sections 30, 30A, 31, 35, 36 and 52A and sections 1(2) and 2(2) and Table 2 of Schedule 1”.</p>
2	<p>(a) In subclause (1) –</p> <p>(i) by deleting the definition of “do-not-call register” and substituting –</p> <p>““do-not-call register” (拒收訊息登記冊) means a register established and kept under section 30 (<i>Authority may establish do-not-call registers</i>);”;</p> <p>(ii) in the definition of “enforcement notice”, by deleting “issued under section 35” and substituting “under section 35(1)”;</p> <p>(iii) by deleting paragraph (c) of the definition of “organization” and substituting –</p> <p>“(c) a partnership or other unincorporated body of persons, whether formed or established in Hong</p>

Kong or elsewhere;”;

- (iv) by deleting paragraph (d) of the definition of “registered user” and substituting –

“(d) in any other case, the individual or organization who is responsible for the relevant electronic address account,

and, if 2 or more individuals or organizations are jointly responsible for such an account, means any of those individuals or organizations;”;

- (v) by adding –

““document” (文件) includes, in addition to a document in writing –

(a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and

(b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;”.

(b) By adding –

“(1A) For the purposes of paragraphs (a), (b), (c), (d), (e) and (f) of the definition of “commercial electronic message” in subsection (1), it is immaterial whether –

- (a) the goods, services, facilities, land, interest in land, business opportunity or investment opportunity exists; or
- (b) it is lawful to acquire the goods, services, facilities, land, interest in land, business opportunity or investment opportunity.

(1B) For the purposes of the definition of “electronic message” in subsection (1), it is immaterial whether –

- (a) the electronic address exists; or
- (b) the message reaches its intended destination.”.

(c) In subclause (3), by deleting “, associations, societies”.

(d) By adding –

“(4) Where, in any provision of this Ordinance, a reference is made to another provision of this Ordinance and the reference is followed by text in parenthesis that purports to be descriptive of the subject matter of the provision referred to, the text in parenthesis shall be treated as having been provided for information only and does not have any legislative effect.”.

5

(a) By deleting subclause (1) and substituting –

“(1) For the purposes of this Ordinance –

“consent” (同意), in relation to the sending of a commercial electronic message, means –

- (a) express consent; or
- (b) consent that can reasonably be inferred from the conduct of the individual or organization concerned;

“withdraw” (撤回), in relation to consent, means to expressly withdraw that consent.

(1A) For the purposes of this Ordinance, consent to the sending of a commercial electronic message may be given, and such consent may be withdrawn, by means of an electronic message or in any other manner.”.

(b) By deleting subclause (2)(b) and substituting –

“(b) has not, within a reasonable period of time prior to the sending of the message, withdrawn that consent.”.

New

By adding –

**“5A. Application**

- (1) This Ordinance binds the Government.
- (2) Neither the Government nor any public officer in the officer’s capacity as such is liable to be prosecuted for an offence against this Ordinance.”.

6

(a) In the heading, by deleting “**Exclusions**” and substituting “**Exemptions**”.

(b) By deleting subclause (1) and substituting –

“(1) The matters specified in Schedule 1 are exempt

from the application of this Ordinance to the extent and subject to the conditions, if any, specified in that Schedule.”.

- 7(1) In the Chinese text, by deleting paragraph (c) and substituting –  
“(c) 該訊息載有規例所指明的資料(如有的話), 並符合規例所指明的條件(如有的話); 及”.
- 8 (a) In subclause (1), by adding –  
“(ba) the statement complies with such conditions as are specified in the regulations, if any;  
(bb) the unsubscribe facility complies with such conditions as are specified in the regulations, if any;”.
- (b) In subclause (3), by deleting “7” and substituting “3”.
- 10 (a) In the heading, in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- (b) In subclauses (1), (2) and (3), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
- 14(3) By deleting “or recklessly”.
- 15(3) By deleting “or recklessly”.
- 16(3) By deleting “or recklessly”.
- 17(3) By deleting “or recklessly”.



- 18(3) By deleting “or recklessly”.
- 21(1) (a) By deleting “knowingly or recklessly”.  
(b) In paragraph (b), by adding “knowingly” before “initiates”.
- 23 (a) In subclause (1)(b), by deleting “or recklessly”.  
(b) In subclause (2), by deleting “knowingly”.
- 24 (a) In subclause (1) –  
(i) in paragraph (a), by deleting “knowingly”;  
(ii) in paragraph (b), by deleting “or recklessly”.  
(b) In subclause (2), by deleting “knowingly”.
- 25(1)(b) By deleting “or recklessly”.
- 26 In the definition of “specified offence”, by adding “or Part 7 (*miscellaneous*)” before the full stop.
- 27 By deleting “Ordinance” and substituting “Part”.
- 28 By deleting subclause (10) and substituting –  
“(10) A code of practice approved under this section  
and a notice published under subsection (3) or (7) are not  
subsidiary legislation.”.
- 29(5)(b) By deleting “(*Appeal Board established*)”.

- 30
- (a) In the heading, in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
  - (b) By deleting subclause (1) and substituting –
    - “(1) The Authority may establish and keep one or more registers of electronic addresses for the purposes of this Ordinance, each of which is to be known as a do-not-call register, and may do all things necessary for, or incidental or conducive to, the establishment, operation and administration of such registers.”.
  - (c) In subclause (2), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
  - (d) In subclause (3), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
  - (e) In subclause (4), by deleting “A do-not-call” and substituting “Without limiting the generality of subsection (1), a do-not-call”.
  - (f) In subclause (5) –
    - (i) by deleting “pursuant to subsection (1)”;
    - (ii) in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
  - (g) By deleting subclause (6).
  - (h) In subclause (7)(a), in the Chinese text, by deleting “拒收登記冊” and substituting “拒收訊息登記冊”.
  - (i) By adding –
    - “(7A) A certificate purporting to be signed by the Authority or an authorized officer and stating that an electronic address was or was not listed in a do-not-call

register at a date specified in the certificate shall be admissible as evidence of its contents in any legal proceedings.”.

(j) By deleting subclause (8).

New

By adding –

**“30A. Powers of Authority in relation to do-not-call registers**

(1) Without limiting the generality of section 30(1) (*Authority may establish do-not-call registers*), the Authority may determine –

- (a) the criteria for determining whether an electronic address is eligible to be listed in a do-not-call register;
- (b) the procedures for adding an electronic address to a do-not-call register;
- (c) the period for which an electronic address may be listed in a do-not-call register;
- (d) the circumstances in which and the manner in which an electronic address may be removed from a do-not-call register;
- (e) the fees to be paid for the provision by the Authority of any service in relation to a do-not-call register; and
- (f) any other matter relating to the establishment, operation or administration of a do-not-call register.

(2) The Authority shall not add an electronic

address to a do-not-call register unless the registered user of that electronic address has given his consent to its inclusion in the register and to its being made available under section 31 (*access to do-not-call registers*).”.

31

By deleting the clause and substituting –

**“31. Access to do-not-call registers**

(1) Subject to subsection (2), the Authority shall, having regard to the purposes described in section 30(2) (*Authority may establish do-not-call registers*), cause the information contained in a do-not-call register to be made available to senders of commercial electronic messages.

(2) The Authority may, for the purpose of performing his functions under subsection (1), determine –

- (a) the procedures to be followed by any person who wishes to obtain access to information contained in a do-not-call register;
- (b) the conditions that must be met before such information is made available to any person;
- (c) the form in which and the manner in which such information is made available to any person;
- (d) the conditions subject to which such information is made available to any person; and

(e) any other matter relating to the provision by the Authority to any person of any such information.

(3) Without limiting the powers of the Authority under section 30A(1)(e) (*powers of Authority in relation to do-not-call registers*) but subject to subsection (4), the Authority may charge fees for making information contained in a do-not-call register available to any person under this section.

(4) The Authority shall provide facilities to enable the registered user of an electronic address to verify, free of charge, whether that electronic address is listed in a do-not-call register.”.

32 By deleting the clause.

33 By deleting the clause and substituting –

**“33. Authority may issue directions to telecommunications service providers**

(1) Subject to subsections (2) and (3), the Authority may, by notice in writing served on a telecommunications service provider, issue directions to the telecommunications service provider requiring it to –

(a) take such action as the Authority considers necessary for the purpose of assisting the Authority to determine whether to commence an investigation into a contravention or suspected

contravention of a provision of this Ordinance;

- (b) take such action as the Authority considers necessary for the purpose of assisting or enabling the Authority to investigate a contravention or suspected contravention of a provision of this Ordinance; or
- (c) provide information to the Authority for the purpose of assisting or enabling the Authority to establish, operate or administer a do-not-call register,

and the telecommunications service provider shall give effect to such directions before a date specified in the notice, being a date reasonable in all the circumstances of the case.

(2) No directions shall be issued to a telecommunications service provider under subsection (1) in relation to a matter for which the Authority may serve a notice on the telecommunications service provider under section 34 (*Authority may obtain information or documents relevant to investigation*) or section 35 (*Authority may issue enforcement notice*).

(3) No directions shall be issued to a telecommunications service provider under subsection (1) unless the Authority is satisfied that the telecommunications service provider has been afforded a reasonable opportunity to make representations to the Authority.

**33A. Authority may impose financial penalties**

(1) The Authority may, by notice in writing served on a telecommunications service provider, require the telecommunications service provider to pay to the Government the financial penalty specified in the notice in any case where it fails to comply with any direction issued in respect of the telecommunications service provider under section 33 (*Authority may issue directions to telecommunications service providers*).

(2) A financial penalty imposed on a telecommunications service provider under subsection (1) shall not exceed –

- (a) \$50,000 for the first occasion on which a financial penalty is so imposed;
- (b) \$100,000 for the second occasion on which a financial penalty is so imposed;  
and
- (c) \$200,000 for any subsequent occasion on which a financial penalty is so imposed.

(3) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that financial penalty.

(4) The Authority shall not impose a financial penalty under this section unless he has given the telecommunications service provider concerned a reasonable

opportunity to make representations, and the Authority shall consider all representations made to him before he makes a decision whether or not to impose a financial penalty.

(5) Subsection (1) shall not apply in the case of the telecommunications service provider concerned unless the Authority is satisfied that it has been afforded a reasonable opportunity of complying with the direction in respect of which that subsection is sought to be applied.

(6) A financial penalty imposed under this section is recoverable as a civil debt due to the Government.”.

- 34
- (a) In subclause (1), in the Chinese text, by deleting “(但不限於)” and substituting “但不限於”.
  - (b) In subclause (3) –
    - (i) by adding “, on application by the Authority” after “a magistrate may”;
    - (ii) in paragraph (a), by deleting “and” at the end;
    - (iii) in paragraph (b), by deleting “notice,” and substituting “notice; and”;
    - (iv) by adding –
      - “(c) after considering the representations, if any, made by the Authority or the person on the hearing of the application,”.
  - (c) By adding –
    - “(3A) The person in respect of whom an application is made by the Authority under subsection (3) shall be entitled to be heard on the hearing of the application –



- (a) where the person is an individual, either in person or through a counsel or solicitor;  
or
- (b) where the person is an organization, either through a counsel or solicitor or through –
  - (i) in the case of a Hong Kong company or other company or body corporate, any of its directors or other officers;
  - (ii) in the case of a partnership, any of its partners; and
  - (iii) in the case of any other organization, any of its officers.”.
- (d) By deleting subclauses (5) and (6).

New

By adding –

**“34A. Disclosure of information and documents given or produced under section 34**

(1) The Authority shall not disclose any information or document given or produced to him under section 34 (*Authority may obtain information or documents relevant to investigation*) unless he is satisfied that –

- (a) it is necessary to disclose the information or document for the purposes of a proceeding under subsection (3) of that section;
- (b) it is necessary to disclose the information or document for the purposes of –

- (i) the prevention or detection of crime;
  - (ii) the apprehension, prosecution or detention of offenders; or
  - (iii) the fulfilment of any obligation under an international agreement applicable to Hong Kong and relating to unsolicited electronic messages; or
- (c) it is otherwise in the public interest to disclose the information or document.

(2) The Authority shall not disclose any information or document given or produced to him under section 34 (*Authority may obtain information or documents relevant to investigation*) unless he has given the person who gave or produced the information or document to the Authority a reasonable opportunity to make representations on the proposed disclosure, and the Authority shall consider all representations made to him before he makes a decision whether or not to disclose the information or document, as the case may be.”.

37

- (a) In subclause (1)(b) –
- (i) by deleting “38” and substituting “38(1)”;
  - (ii) in subparagraph (ii), in the Chinese text, by deleting “扣留任何在該處所或地方之內或之上發現的人的期間內，扣留該人” and substituting “的期間內，扣

留任何在該處所或地方之內或之上發現的人”。

- (b) By deleting subclause (2).
  - (c) In subclause (3) –
    - (i) by deleting “this section” and substituting “a warrant issued under section 38(1) (*power of magistrate to issue search warrant*)”;
    - (ii) by adding –
      - “(ab) require to be given or produced to him any information (including but not limited to passwords) or document or other thing as will enable him to inspect, operate and analyze any telecommunications device or other thing referred to in paragraph (a);”.
  - (d) By adding –
    - “(3A) The Authority or an authorized officer may –
      - (a) break into and forcibly enter any premises or place that he is empowered to enter and search under a warrant issued under section 38(1) (*power of magistrate to issue search warrant*); and
      - (b) remove by force any person or thing obstructing him in the performance of his functions under this section.”.
  - (e) In subclause (6), by adding “enactment or rule of” before “law”.
- (a) By renumbering the clause as clause 38(1).

(b) By adding –

“(2) Where the Authority or an authorized officer enters any premises or place under a warrant issued under subsection (1), he shall, on request, produce the warrant and evidence of his identity for inspection by any person found in or on the premises or place.”.

- 39(1) (a) In paragraph (a), by deleting “this Ordinance” and substituting “section 37 (*powers of entry, search, arrest, etc.*)”.
- (b) In paragraph (b), by adding “under that section” after “authorized officer”.
- (c) In paragraph (c), by deleting “this Ordinance” and substituting “that section”.

40 By adding –

“(4) In this section, “costs and expenses” (費用及開支), in relation to an investigation, means staff costs and expenses and the financing of liabilities paid out of the Office of the Telecommunications Authority Trading Fund in respect of that investigation.”.

New By adding –

**“40A. Service of notices for purposes of sections 33, 33A, 34 and 35**

(1) A specified notice may be served by prepaying (where requisite), registering and posting an envelope addressed to the person on or to whom the notice is to be served at his usual or last known place of abode or business

and containing the notice; and, unless there is evidence to the contrary, the notice shall be deemed to have been served and received at the time at which such envelope would have been delivered in the ordinary course of post.

(2) For the purposes of this section, a company within the meaning assigned by section 2(1) of the Companies Ordinance (Cap. 32) shall be deemed to have its usual place of business at its registered office for the purposes of that Ordinance, and any other organization shall be deemed to have a usual place of business at its principal office or any other place at which it carries on business.

(3) In this section, “specified notice” (指明通知) means a notice under –

- (a) section 33 (*Authority may issue directions to telecommunications service providers*);
- (b) section 33A (*Authority may impose financial penalties*);
- (c) section 34 (*Authority may obtain information or documents relevant to investigation*); or
- (d) section 35 (*Authority may issue enforcement notice*).”

- 42
- (a) By deleting “(*Appeal Board established*)” wherever it appears.
  - (b) In the definition of “presiding officer”, by deleting “section 45(1)(a) (*procedure on appeal*)” and substituting “section 45 (*composition of Appeal Board for purposes of appeal*)”.

- (c) By adding –  
““legally qualified” (具所需法律資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336);”.

43

- (a) By deleting subclause (2) and substituting –  
“(2) The Chief Executive shall appoint a legally qualified person to be the Chairman of the Appeal Board and such other legally qualified persons as he thinks fit to be Deputy Chairmen of the Appeal Board.”.

- (b) By deleting subclauses (3) and (4).

- (c) By deleting subclause (5) and substituting –

“(5) The Chief Executive shall appoint a panel of persons, not being public officers, whom he considers suitable for selection under section 45(1)(b) (*composition of Appeal Board for purposes of appeal*) as members of the Appeal Board.

(5A) A person shall be appointed under subsection (2) or (5) for a term of not more than 3 years but may be reappointed.”.

45

By deleting the clause and substituting –

**“45. Composition of Appeal Board  
for purposes of appeal**

(1) For the purposes of an appeal, the Appeal Board shall consist of –

- (a) a presiding officer, who shall preside at the hearing of the appeal; and

(b) 2 panel members selected by the presiding officer.

(2) Subject to subsections (3), (4) and (5), the Chairman or, if the Chairman so determines, a Deputy Chairman selected by the Chairman shall act as presiding officer.

(3) The Chairman shall not act as presiding officer if he has a direct or indirect interest in the appeal.

(4) The Chairman shall not select a Deputy Chairman to act as presiding officer if the Deputy Chairman has a direct or indirect interest in the appeal.

(5) In the event that the Chairman and each Deputy Chairman has a direct or indirect interest in an appeal, the Chief Executive may select a panel member who is legally qualified and who does not have a direct or indirect interest in the appeal to act as presiding officer.

(6) The presiding officer shall not select a panel member to hear an appeal if the panel member has a direct or indirect interest in the appeal.

(7) If the term of appointment of the presiding officer or a panel member selected under subsection (1)(b) expires during the hearing of an appeal, the presiding officer or panel member may continue to hear the appeal until the appeal is determined.

#### **45A. Procedure on appeal**

(1) In the hearing of an appeal, every question before the Appeal Board shall be determined by the opinion of

the majority of the members hearing the appeal except a question of law which shall be determined by the presiding officer, and in the case of an equality of votes the presiding officer shall have a casting vote.

(2) A party to an appeal shall be entitled to be heard –

- (a) where the party is an individual, either in person or through a counsel or solicitor; or
- (b) where the party is an organization, either through a counsel or solicitor or through –
  - (i) in the case of a Hong Kong company or other company or body corporate, any of its directors or other officers;
  - (ii) in the case of a partnership, any of its partners; and
  - (iii) in the case of any other organization, any of its officers.

(3) The Appeal Board may, if it sees fit, permit a party to an appeal to submit written representations to the Appeal Board in lieu of the party appearing at a sitting of the Appeal Board either in person or through a counsel or solicitor or a director, officer or partner referred to in subsection (2).

(4) Every sitting of the Appeal Board shall be held in public unless the Appeal Board considers that in the interests of justice a sitting or part of a sitting should not be held in public, in which case it may hold the sitting or part of



the sitting in private.

(5) After hearing an appeal, the Appeal Board shall determine the appeal by upholding, varying or setting aside the enforcement notice and may make such consequential orders as it considers necessary.

(6) The Appeal Board shall notify in writing the parties to the appeal of its decision and the reasons for the decision.”.

- 46 (a) In subclause (1)(b)(i), by deleting “information or”.
- (b) In subclause (4), by deleting “the rules” and substituting “any rules”.
- 51 By deleting paragraph (b) and substituting –
- “(b) generally for regulating the practice and procedure of the Appeal Board.”.
- 52 (a) In subclause (1), by deleting “(whether or not he has been convicted of an offence in relation to the contravention)”.
- (b) By adding –
- “(1A) For the purposes of subsection (1), it is immaterial whether –
- (a) the contravention constitutes an offence;
- or
- (b) the person who committed the contravention has been convicted of an offence in relation to the contravention.”.

- (c) In subclause (4) –
  - (i) by adding “enactment or rule of” before “law”;
  - (ii) by deleting “mentioned” and substituting “referred to”;
  - (iii) in the Chinese text, by deleting “或授予” and substituting “或”.
- (d) In subclause (5), by deleting “mentioned” and substituting “referred to”.
- (e) In subclause (7), in the Chinese text, by deleting “任何人根據任何其他成文法則或法律規則而獲賦予或委予” and substituting “根據任何其他成文法則或法律規則賦予或施加於任何人”.

New

By adding –

**“52A. Offences relating to misuse of information**

(1) No person to whom an unsubscribe request is sent under section 8 (*commercial electronic messages must contain unsubscribe facility*) shall use any information obtained thereby other than for the purpose of complying with the requirements of that section or section 9 (*commercial electronic messages must not be sent after unsubscribe request is sent*).

(2) No person to whom any information contained in a do-not-call register is made available under section 31 (*access to do-not-call registers*) shall use any information obtained thereby other than for the purpose described in section 30(2)(b) (*Authority may establish do-not-call registers*).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine at level 6.

(4) A person who knowingly contravenes subsection (1) or (2) commits an offence and is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years.

(5) It is a defence to a charge for an offence under subsection (3) for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.”.

54

- (a) In subclause (1) –
- (i) by deleting “a company or a partnership” and substituting “an organization”;
  - (ii) by deleting “he proves” and substituting “there is evidence showing”;
  - (iii) in paragraph (a), by deleting “case of the company” and substituting “case of a Hong Kong company or other company or body corporate (“the company”)”;
  - (iv) in paragraph (b) –
    - (A) in the English text, by deleting “case of the” and substituting “case of a”;
    - (B) in subparagraph (ii), by deleting the full stop and substituting “; and”;
  - (v) by adding –
    - “(c) in the case of any other organization, any

officer of the organization or other person who, at the time the act was done or the conduct was engaged in, was responsible for the internal management of the organization.”.

(b) By deleting subclause (2).

(c) By deleting subclause (3) and substituting –

“(3) A person charged with an offence under this Ordinance by virtue of subsection (1) is taken not to have done the act in question or not to have engaged in the conduct in question if –

- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done or the conduct to be engaged in; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

Schedule 1 By deleting the Schedule and substituting –

## “SCHEDULE 1

[s. 6]

## EXEMPTIONS

**1. Interpretation**

(1) In this Schedule –

“sound broadcasting service” (聲音廣播服務) means –

- (a) a service that includes broadcasting as defined in section 13A(1) of the Telecommunications Ordinance (Cap. 106); or
- (b) a service of a like nature;

“television programme service” (電視節目服務) means –

- (a) a television programme service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562); or
- (b) a service of a like nature.

(2) For the avoidance of doubt, the exemption of a matter from the application of Part 2 of this Ordinance (*rules about sending commercial electronic messages*) in accordance with Table 2 shall not be construed as implying that the other provisions of this Ordinance apply to that matter.

**2. Exemptions**

(1) The matters described in an item in Table 1 are exempt from the application of this Ordinance.

(2) The matters described in an item in column 1 in Table 2 are exempt from the application of Part 2 of this Ordinance (*rules about sending commercial electronic messages*) subject to the conditions, if any, specified in column 2 of that item.

TABLE 1  
MATTERS EXEMPTED FROM APPLICATION OF ORDINANCE

Item	Description of exempt matter
1.	Voice, sound, image or video messages, or messages combining text, voice, sound, images or video, that involve person-to-person interactive communications between a caller and a recipient without any pre-recorded or synthesized (machine-generated or simulated) element.
2.	Voice, sound, image or video messages, or messages combining text, voice, sound, images or video, that involve – <ul style="list-style-type: none"><li>(a) person-to-person interactive communications between a caller and a recipient; and</li><li>(b) a pre-recorded or synthesized (machine-generated or simulated) element,</li></ul> whereby the pre-recorded or synthesized element is activated in response to information communicated by the caller.
3.	Television programme services, whether or not licensed under the Broadcasting Ordinance (Cap. 562).
4.	Sound broadcasting services, whether or not licensed under the Telecommunications Ordinance (Cap. 106).

TABLE 2  
MATTERS EXEMPTED FROM APPLICATION  
OF PART 2 OF ORDINANCE

Item	Column 1 Description of exempt matter	Column 2 Conditions to which exemption is subject
1.	<p>Any commercial electronic message sent to a person that meets the following conditions –</p> <p>(a) the message is sent in response to information communicated to the sender by that person (including but not limited to information communicated through the Internet);</p> <p>(b) the information is communicated to the sender by that person either directly or in consequence of the conduct of that person;</p> <p>(c) the message would not have been sent but for the communication of that information; and</p> <p>(d) the message is of a kind that the person would normally expect to receive as a result of the communication of that information.</p>	<p>The exemption is subject to the condition that the commercial electronic message is sent to the person within a reasonable time after the information is communicated to the sender by that person.</p>

2. Any electronic message the primary purpose of which is – Not applicable.
- (a) to facilitate, complete or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;
  - (b) to provide warranty information, product recall information or safety or security information with respect to a commercial product or service purchased or used by the recipient; or
  - (c) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.
3. Any electronic message the primary purpose of which is to provide – Not applicable.
- (a) notification concerning a change in the terms or features of;
  - (b) notification of a change in the recipient's standing or status with respect to; or
  - (c) at regular periodic intervals,



account balance information or  
other type of account statement  
with respect to,

a subscription, membership, account,  
loan or comparable ongoing commercial  
relationship involving the ongoing  
purchase or use by the recipient of goods  
or services offered by the sender.

4. Any electronic message the primary purpose of which is to provide information directly related to an employment relationship or a related benefit plan in which the recipient is currently involved, participating or enrolled.

Not applicable.”.

- Schedule 2
- (a) In section 1(2), in the proposed section 24(2)(a), by deleting “any other law” and substituting “the Unsolicited Electronic Messages Ordinance ( of 2007)”.
  - (b) In section 2, by deleting everything after “item 1,” and substituting –  
“by repealing “Telephone Ordinance (Cap. 269)” and substituting “Unsolicited Electronic Messages Ordinance ( of 2007)”.”.