OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 27 June 2012

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE JASPER TSANG YOK-SING, 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

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

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

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

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

THE HONOURABLE EDWARD YAU TANG-WAH, G.B.S., J.P.
SECRETARY FOR THE ENVIRONMENT

THE HONOURABLE EVA CHENG, G.B.S., J.P.
SECRETARY FOR TRANSPORT AND HOUSING

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

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

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

PRESIDENT (in Cantonese): The meeting will now start.

TABLING OF PAPERS

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

No. 97 ─ Report by the Trustee of the Correctional Services Children's Education Trust for the period of 1st September 2010 to 31st August 2011

No. 98 ─ Airport Authority Hong Kong Annual Report 2011/12

No. 99 ─ Securities and Futures Commission Annual Report 2011-12

Report of the Bills Committee on Companies Bill

Report of the Bills Committee on Residential Properties (First-hand Sales) Bill

Report of the Bills Committee on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

Report of the Legislative Council Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues

ADDRESSES

PRESIDENT (in Cantonese): Address. Mr IP Kwok-him will address the Council on the Report of the Legislative Council Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues.

Report of the Legislative Council Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues

MR IP KWOK-HIM (in Cantonese): President, in my capacity as Chairman of the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues (the Select Committee), I now submit the Select Committee's Report to the Legislative Council.

First of all, I would like to give a brief account of the background of the formation of the Select Committee. The West Kowloon Reclamation Concept Plan Competition (the Competition) was held in 2001-2002. Ten years later, Mr LEUNG Chun-ying was reported in the media early this year to have allegedly omitted declaring his interest as the Chairman of DTZ Debenham Tie Leung Limited (DTZ), which was included as a member of Dr Kenneth YEANG's Project Team, and hence Mr LEUNG was alleged to have a conflict of interests. Such media reports were made in the run-up to the Fourth Term Chief Executive Election at which Mr LEUNG was then a prospective candidate. On 8 February 2012, the Administration issued a press release on the declaration made by Mr LEUNG in respect of the Competition. There were calls in the community for the Administration to disclose fully all information relating to the Competition in order to consider if the conflict of interests allegations against Mr LEUNG could be substantiated.

I believe colleagues should recall that the House Committee convened a special meeting for this purpose and requested the Administration to provide a series of information. And yet, the information disclosed by the Administration

has failed to address public concern and thus the House Committee decided to set up a select committee for this cause. The Legislative Council passed a resolution on 29 February 2012 to appoint the Select Committee and authorize the Select Committee, in the performance of its duties, to exercise the powers conferred by section 9(1) of Legislative Council (Powers and Privileges) Ordinance to order the attendance of witnesses to give evidence and the production of papers by witnesses.

I must point out that when the Select Committee was formed, the Select Committee accorded paramount importance to the principle of impartiality. To avoid that the Select Committee might be perceived to have a conflict of interests, the House Committee decided that, in the course of discussing the membership list of the Select Committee, the chairman and deputy chairman of the Select Committee should only be those members who had not made any nomination of candidates in the Chief Executive Election. The Select Committee also decided that if a member wished to declare non-pecuniary interests, he should write to the Chairman of the Select Committee to declare such interests and their declaration would be uploaded onto the website of the Legislative Council for public inspection.

In order to enhance the transparency of the Select Committee's proceedings, all the hearings were held in public, whereas all unclassified documents obtained by the Select Committee, once produced by witnesses at open hearings, were uploaded onto the website of the Legislative Council. As Chairman of the Select Committee, I conducted briefings for the media after each meeting to update the public the progress of the Select Committee and replied the media's enquiries.

The Select Committee held the first meeting on 10 March 2012, and a total of 11 meetings and six public hearings were held to take evidence from 17 witnesses. The findings, observations and conclusions of the Select Committee have been detailed in the Report. I believe Members will have more thorough discussion when a motion debate on the Report is held on 11 July. I will just highlight the conclusions of the Select Committee in the following.

President, before I give a summarized account of the conclusions reached by the Select Committee, I must point out that the Select Committee voted on a

number of occasions on the wordings used in some parts of the conclusions of the Report. Members agreed that the relevant voting results should be reflected in the Report.

Regarding the fact that DTZ was named as "property advisors" by Dr Kenneth YEANG's Project Team of the Competition, the Select Committee believed that when Mr CHIU Kam-kuen and Mr WONG Kim-bon, DTZ's Executive Director and Director respectively, provided free land value information concerning the West Kowloon Reclamation to one of the participating teams, the Davis Langdon & Seah Hong Kong Limited (DLS), in September 2001, they were aware that DTZ was included in Dr Kenneth YEANG's Project Team as a member. However, Mr CHIU Kam-kuen and Mr WONG Kim-bon denied at the Select Committee that they were aware of this back then. After the Select Committee carefully examined the evidences given by the two of them and other witnesses, it considered them not credible. Notwithstanding this, the Select Committee has not found any evidence that Mr CHIU or Mr WONG informed Mr LEUNG Chun-ying of DTZ's association with Dr Kenneth YEANG's entry before Mr LEUNG's adjudication of the entries.

Mr LEUNG Chun-ying claimed to the Select Committee that before completing his declaration of interests form for members of the Jury, he had made a phone call to the DTZ office at Quarry Bay and asked the staff member who received his call but was not known to him to go through the "Book" as a conflict of interests search. However, Mr LEUNG failed to remember the staff member concerned and gave inconsistent evidence in relation to the identity the staff member concerned. As a result, the Select Committee could not identify the staff member concerned to give evidence. The Select Committee is surprised that Mr LEUNG failed to remember the identity of the staff member concerned.

The Select Committee also found that the "Book" which Mr LEUNG Chun-ying used to conduct conflict searches only recorded paid jobs undertaken or confirmed to be undertaken by the Valuation Department of DTZ. Since DTZ's provision of land value information concerning the West Kowloon Reclamation to DLS in September 2001 was not a paid job, it was not recorded in the "Book". Therefore, the "Book" would not reveal DTZ's association with Dr Kenneth YEANG's entry regardless of whether Mr LEUNG Chun-ying conducted the conflict of interests searches.

The Select Committee noted that, in the declaration form, Mr LEUNG Chun-ying selected item (c) at the time — that is, "I am not a director or major shareholder of any company" instead of item (d) — that is, "no company of which I am a director or major shareholder has entered the competition". Mr LEUNG claimed that according to his understanding back then, he was required to make declaration of a conflict of interests instead of a general declaration of interests. The Select Committee considered that had Mr LEUNG acted as he claimed, he should have selected item (d) instead of item (c) in the declaration form. The Select Committee considered that the declaration Mr LEUNG Chun-ying made on the declaration form was both incorrect and incomplete. The Select Committee therefore holds that Mr LEUNG Chun-ying did not accord sufficient attention to completing the declaration form, at which the Select Committee expresses dismay.

Given the anonymity of the participants and in the absence of evidence to the effect that the identities of the participants might be known through other channels, the Select Committee considers that Mr LEUNG Chun-ying and other members of the Jury should not be aware of the identities of the participants in the adjudication process.

Given the possible interests to be gained by the winning entrants, the organizer's reminder to Mr LEUNG Chun-ying regarding the implications of his appointment as a member of the Jury on his company, Mr LEUNG Chun-ying's extensive public service experience as well as the reasonable expectation on him as the Convenor of the Non-official Members of the Executive Council at the time, the Select Committee considers that Mr LEUNG Chun-ying should endeavour to avoid possible conflicts of interests and ensure that DTZ did not enter the Competition. The Select Committee expresses disappointment that Mr LEUNG Chun-ying did not take any action to inform DTZ of his appointment as a member of the Jury and DTZ's ineligibility for the Competition, and considers that Mr LEUNG Chun-ying had unshirkable responsibility in this regard. On the other hand, the Select Committee also expresses disappointment at the organizer's hasty implementation of the declaration arrangements for the Jury at a very late stage and considers the declaration arrangements too loose.

Last of all, I consider it necessary to put on record that on 23 May and 21 June this year, the press published reports which claimed to disclose the contents of the Select Committee's draft report and details of the Select

Committee's internal deliberations. In order not to prejudice the impartiality of the work of the Select Committee and bring unfairness to the witnesses concerned, the Select Committee has made two separate statements to express grave concern and deep regret about the reports. Since the publication of the relevant report on 23 May, I have reminded members at every meeting to uphold strict confidentiality of the contents of the draft report and details of the internal deliberations of the Select Committee. After a similar report was published again on 21 June, I even convened an informal meeting to seriously ask each member to perform their secrecy duty by signing a confidentiality undertaking. As Chairman of the Select Committee, I express my deep regret and disappointment about the unauthorized disclosure of the contents of the Select Committee's Report, and condemn those involved.

President, the Select Committee is, in the records of the Legislative Council, among those which completed its investigative work within the shortest time and with the least resources. I am sincerely grateful for the support of all members, the co-operation of the Administration and the assistance of all witnesses, which have made this difficult task possible. I am also very grateful for the support provided by the Secretariat.

President, I so submit.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Measures to Tackle Sales of Illicit Cigarettes

1. **MR VINCENT FANG** (in Cantonese): *President, the Customs and Excise Department (C&ED) has recently announced a number of operations which successfully intercepted duty-not-paid cigarettes (illicit cigarettes). However, some reports have reflected that the mode of operation, delivery and selling practices in respect of illicit cigarettes have gradually become more organized and systematic, and that students, elderly people and postal service are used for sending illicit cigarettes to buyers. My email account has also repeatedly*

received emails promoting the sale of illicit cigarettes. In this connection, will the Government inform this Council:

(a) how the government revenue generated from tobacco duty in the past two financial years and in the first two months of the current financial year compares with that of the corresponding periods in the previous years; of the quantity of duty-paid cigarettes involved; the changes in the mode of operation of the illicit cigarette trade as shown in the cases successfully cracked down by the C&ED; the authorities' counter-measures, in addition to the "Telephone Order Task Unit" established by the C&ED this year, to tackle organized operation and peddling of illicit cigarettes on the Internet; whether the authorities have publicity measures targeting at students seeking summer jobs to prevent them from being used by illicit cigarette syndicates to sell or deliver illicit cigarettes;

(b) as the Government offers rewards to persons reporting illicit cigarette activities, of the number of persons who had been rewarded and the quantity of illicit cigarettes seized as a result in the past three years; it has been learnt that the amount of reward is pegged to the quantity of illicit cigarettes seized, but as the C&ED has stepped up efforts in combating illicit cigarette activities, traders of illicit cigarettes break down their "goods" into smaller quantities, rendering it impossible for persons making such reports to get any reward because of the small quantity of illicit cigarettes seized by the C&ED, whether the authorities have any plan to revise the reward scheme, so as to encourage more people to report illicit cigarette activities; and

(c) following the series of tobacco control measures launched by the Government, of the number of smokers in Hong Kong in the past three years, the changes in their age distribution, as well as the number of those who sought cessation support through the Government's smoking cessation hotline or the public health system together with their age distribution; given that some tobacco control groups have recently suggested applying the concept of "dedicated-fund-for-dedicated-use" to tobacco duty in that the duty so collected would be used for the purposes of tobacco control and

helping smokers give up smoking, whether the authorities will consider this suggestion; if they will, of their plan; if not, the reasons for that, and whether they will consider increasing the funding and support for tobacco control and combating illicit cigarettes?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, after co-ordinating the information from the Financial Services and the Treasury Bureau, the Food and Health Bureau and the C&ED, my answers to the three parts of the question are set out below.

(a) Regarding the total government revenue generated from tobacco duty and the number of cigarettes involved, the amount of duty from cigarettes dropped slightly from some $4.18 billion in 2010-2011 to some $4.15 billion in 2011-2012, representing a drop of less than 1%, whereas the number of duty-paid cigarettes dropped from some 3.46 billion sticks in 2010-2011 to some 2.43 billion sticks in 2011-2012, representing a drop of around 30%. For the first two months of the current financial year, as compared with the same period in the previous year, the duty from cigarettes increased from about $200 million to some $730 million, and the number of duty-paid cigarettes rose from about 120 million sticks to some 420 million sticks, both representing an increase of close to 250%.

On anti-illicit cigarette operation, the C&ED has been continuously making vigorous efforts in combating the smuggling, distribution and peddling of illicit cigarettes in town. In 2011-2012, the number of illicit cigarette cases detected by the C&ED increased by about 60% from 6 028 cases to 9 735 cases when compared with that in 2010-2011; and the number of cigarettes seized from local cases dropped by about 10% from 64 million sticks to 57 million sticks. When comparing the first two months of the current financial year with the same period of the previous year, the number of illicit cigarette cases detected by the C&ED rose by about 30% from 1 309 cases to 1 660 cases, and the number of cigarettes seized from local cases was more or less the same at 15 million sticks. On the whole, the situation of illicit cigarette activities has been kept under control without any sign of deterioration.

As regards peddling of illicit cigarettes, since the C&ED has deployed a Special Task Force to step up sweeping operation at black spots in various districts, peddling activities on street have been largely suppressed. Ordering via telephone has become the major channel for illicit cigarette peddling. In order to step up efforts to combat these activities, the C&ED established on 1 April 2012 a Telephone Order Task Unit comprising 15 officers to conduct in particular intelligence analysis and law-enforcement against peddling via telephone orders and online sale of illicit cigarettes.

To raise public awareness of the fact that buying or selling illicit cigarettes is illegal, the C&ED will continue rolling out its publicity campaign, which includes broadcasting anti-illicit cigarettes APIs on radio and television channels as well as in community halls, and putting up anti-illicit cigarette publicity posters in public housing estates and tertiary institutions, so as to encourage the public to report illicit cigarette activities.

(b) In order to combat various illegal activities, including illicit cigarette activities, the C&ED has put in place a Reward Scheme to reward informers who provide information to assist the Administration in combating the relevant illegal activities. The Scheme is strictly administered in accordance with the established procedures. The Administration will review the Scheme from time to time, including adjusting the reward amount to meet actual needs.

While the amount of reward offered is linked with the quantity of illicit cigarettes seized, the C&ED has detected many illicit cigarette cases based on the reporting by the general public. The general public provided information not merely for the sake of getting reward. Besides, the C&ED will continue to intensify its actions against illicit cigarette activities at different levels, including importation, storage, distribution and street peddling, and will also enhance the publicity to remind the public that it is an offence to sell and buy illicit cigarettes. Hence, the amount of reward will not have profound impact on the enforcement against illicit cigarettes.

In the past three years, the number of reward payments made for providing information on illicit cigarette activities and the numbers of cigarettes involved in these cases are as follows:

Year	*2009-2010*	*2010-2011*	*2011-2012*
Number of reward payments	6	11	4
Cigarette seizures involved (million sticks)	7	21.3	2.6

(c) The Government has been adopting a multi-pronged approach comprising legislation, taxation, publicity, education, enforcement and promotion of smoking cessation services to reduce smoking and protect the public from exposure to second-hand smoke.

According to the last two surveys conducted by the Census and Statistics Department, the proportion of persons who had a daily smoking habit among all persons aged 15 and above dropped from 12.0% (698 700 persons) in 2009 to 11.1% (657 000 persons) in 2010. All age groups saw a significant drop in smoking prevalence except the age groups of age 60 or above and age 15 to 19. The smoking prevalence by age groups as found in the surveys is shown at Annex I.

A new round of survey on smoking prevalence has commenced in late 2011. The Government will continue to monitor the trend of smoking prevalence closely.

On smoking cessation services, the Department of Health (DH) and the Hospital Authority (HA) have been operating cessation counselling telephone hotline, and providing smoking cessation services in their respective clinics. Collaborative efforts have also been undertaken with non-governmental organizations, academic institutions and healthcare professions to promote smoking cessation and provide smoking cessation services to the public. Key statistics on the service throughputs of these counselling and smoking cessation services are at Annex II.

According to the Government's established principles of public finance management, the revenue from tobacco duty, similar to other

tax revenue, will be credited to the General Revenue. Through the Resource Allocation Exercise, the Government will then allocate the resources to its different streams of work and services having regard to the priorities of the time so as to ensure that our work and services can cater for the various needs of the community. If it is rigidly laid down that a certain proportion of a particular item of revenue has to be designated for a particular use, this will undermine our well-established resources allocation mechanism and erode its flexibility.

As a matter of fact, the Government has been devoting more resources to tobacco control, particularly to smoking cessation services. The DH's expenditure on tobacco control has increased from some $110 million in 2011-2012 to some $150 million in the current financial year. The Government will continue to closely monitor the effectiveness of various tobacco control measures, and to provide additional resources for tobacco control where necessary.

Annex I

Number of Daily Cigarette Smokers by Age

Age	*Survey conducted in November 2009 to February 2010*			*Survey conducted in October 2010 to December 2010*			*Comparison of the two surveys*		
	Number of smokers	*Percentage %*	*Rate %**	*Number of smokers*	*Percentage %#*	*Rate %**	*Number of smokers*	*Percentage %*	*Rate %*
15 - 19	7 700	1.1	1.8	10 800	1.7	2.5	3 100	0.6	0.7
20 - 29	99 200	14.2	11.0	88 800	13.5	9.7	-10 500	-0.7	-1.3
30 - 39	157 100	22.5	15.6	145 000	22.1	14.4	-12 200	-0.4	-1.2
40 - 49	170 600	24.4	14.0	151 700	23.1	12.7	-18 900	-1.3	-1.3
50 - 59	155 500	22.3	14.3	146 600	22.3	13.1	-8 900	0.0	-1.2
≥ 60	108 500	15.5	9.1	114 100	17.4	9.2	5 600	1.9	0.1
Total	698 700	100.0	12.0	657 000	100.0	11.1	-41 800	0.0	-0.9

Notes:

* A percentage of all smokers in the respective age groups.

Owing to rounding, there may be a slight discrepancy between the sum of individual items and the total as shown in the table.

Annex II

Key Statistics on Smoking Cessation Services

Service	*Clients served*		
	2009	*2010*	*2011*
The DH (hotline enquiry)	15 500	13 880	20 571
The DH (clinic attendance)	567	597	521
Tung Wah Group of Hospitals programme (started in January 2009)	717	1 288	2 756
Pok Oi Hospital programme (started in April 2010)	Not applicable	1 008	1 380
The HA (number of enquiry)	6 778	6 844	10 648
The HA (number of telephone counselling)	9 192	11 240	17 465
The HA (number of new cases attending smoking cessation clinics)	2 854	4 156	6 419
Aged below 65 (%)	77.7	79.0	76.1
Aged 65 or above (%)	22.3	21.0	23.9

MR VINCENT FANG (in Cantonese): *President, on both occasions when Secretary Dr York CHOW proposed an increase in tobacco duty, he clearly stated that the purpose of such an increase was not to increase government revenue. The Secretary has mentioned in his main reply that if it is rigidly laid down that a particular item of revenue has to be designated for a particular use, this will undermine our well-established resource allocation mechanism and erode its flexibility. Can the Secretary come up with some new ideas to make the work on tobacco control more effective and use the tobacco duty for tobacco control or assisting smokers in smoking cessation so that they can receive free smoking cessation treatment? Can the tobacco duty be alternatively used to combat illicit cigarettes activities, such as increasing the amount of reward for reporting, which is also a reasonable method? Will the Secretary introduce some new ideas in the next term of office?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank the Member for the supplementary question. Certainly, we should consider smoking cessation and tobacco control as the important policy objectives. In this regard, we can see that different government departments have formulated corresponding policies to implement the related work. As I have mentioned in my main reply, the Government will continue to closely monitor the effectiveness of its policies, and to make suitable arrangements for the deployment of resources, so as to ensure that the work on tobacco control and encouraging the public not to smoke will achieve some success.

However, I have to maintain my view as expressed a while ago that, if it is rigidly laid down that a particular revenue has to be designated for a particular use, this will actually undermine the overall revenue-expenditure relationship, which is not a satisfactory approach. We also think that it is unnecessary to do so because the Government will naturally determine resource allocation according to the priorities of various policies. We definitely share Members' concerns about the work on tobacco control.

MR TOMMY CHEUNG (in Cantonese): *I am against the Government's continuous increase in tobacco duty for I am not in the illicit cigarette business and I think that increasing tobacco duty will only be conducive to the business of illicit cigarette traders. I also think that the percentage of smokers in Hong Kong should be the lowest in the world, which is only 11%, and there is only one country in the world that is better than us; and the percentage there is 0% because a total ban on smoking is imposed. Therefore, I think these measures are very unreasonable, pushing up tobacco duty all the time.*

Secretary Dr York CHOW happened to be present and I do not know if he is attending this meeting to answer this question. I remember his remark when an increase in tobacco duty was proposed years ago, and that is, this would combat smokers who could not afford the higher prices and force them to smoke less. However, the figures provided by the Government today appeared rather strange. The age group of age 15 to 19 should have the lowest financial capacity while those aged 60 or above such as the President and I have started to have lower incomes. Nevertheless, the number of smokers in these two age groups has not reduced. I think this proves that the level of tobacco duty seems to have not much an impact on whether people smoke or not.

PRESIDENT (in Cantonese): Please state your supplementary question.

MR TOMMY CHEUNG (in Cantonese): *President, my supplementary question is very simple. We can see from the figures provided by the Secretary that money is not the biggest problem. Therefore, I think the Government's education work is extremely unsatisfactory though it has received so much tobacco duty. I will not bother about smokers aged 60 or above because it is impossible for many of them to get rid of the habit after so many years. As Secretary Dr York CHOW happens to be here, even though he is going to leave office, I wonder if he can teach the next-term Government how to improve the education of smokers aged between 15 and 19. I am more concerned about these young people. Instead of imposing heavy tobacco duty which makes expenses on smoking unaffordable for them, why can we not assist them in smoking cessation?*

PRESIDENT (in Cantonese): The Secretary for Financial Services and the Treasury is the official responsible for replying to this oral question. Secretary, please reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank the Member for his supplementary question. This question has two parts: the first part is on whether an increase in tobacco duty has any impacts on the trend of development of the smoking population. We can see from the survey figures that, on the whole, there is a downward trend in the percentage of smokers in Hong Kong. I believe this is the result achieved by policies, whether on tobacco duty or tobacco control adopted over the past few years.

Regarding the youth smoker problem that the Member is concerned about, we dare not say that we are contented with the present situation of young smokers aged between 15 and 19. Even though the percentage of smokers has not seen a drop, the number of cigarettes they smoked each day has actually reduced. We also dare not say that this proves that our work has achieved results. I believe we still need to continue to carry out publicity and other activities in schools and so on. About the Member's views, I believe the Government will continue to carry out publicity work in schools. As I have just said, we will disseminate the

information that it is an offence to sell and buy illicit cigarettes. We will also step up various publicity measures.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR TOMMY CHEUNG (in Cantonese): *Can I ask Secretary Dr York CHOW to answer the supplementary question I have just asked? I believe he is more familiar with the relevant matters.*

PRESIDENT (in Cantonese): Though the Government has appointed the Secretary for Financial Services and the Treasury to reply to this oral question, I would ask the Secretary for Food and Health if he has anything to add as he is also present now.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I thank the President for allowing me to answer this supplementary question. I do not have the relevant information in hand but the results of some surveys have showed that there are now fewer smokers among secondary students as compared with the situation in the part, particularly the past seven to eight years. For example, the percentage of smokers among secondary students was 9% in the year 2003-2004 but the percentage was reduced to 3.9% in recent years. Therefore, we find that some young people may smoke after leaving school but the percentage of in-school young smokers has actually seen a drop. We hope that we will make more educational efforts. There is definitely such work but we hope that we can and need to conduct more publicity and education work in some places where more young people gather, especially bars and so on.

DR LEUNG KA-LAU (in Cantonese): *President, I would also like to follow up the situation of the age group of 15 to 19. We can see from the data provided by the Government that the number of smokers in 2010 has considerably increased by 40% as compared with that in 2009. This is a considerably big increase. I remember that the Government increased tobacco duty in April 2011. Regarding the data in Annex I, does the Government have the data for the period*

from October to December 2011? As the survey should have completed, its data can really reflect whether an increase in tobacco duty can help reduce young people's desire to smoke. Can the Secretary provide the latest data?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I do not have the relevant data or I will certainly provide the data to Members for reference. Even though I do not have the latest data, I wish to restate that, as I have briefly mentioned in the reply to Mr CHEUNG's supplementary question, we also have some figures to help Members understand the latest situation. The latest percentage of smokers in the age group of 15 to 19 is 2.5%. In the year 2009-2010, this group of smokers smoked 10.8 cigarettes per day, but this number dropped to 8.6 in 2010. Thus, the number of cigarettes smoked have decreased, which also shows that the Government's increase in tobacco duty has achieved some success. Just now, Secretary Dr York CHOW has also provided other figures, showing that the percentage of smokers among Secondary One to Secondary Five students has continued to decline. It has dropped from 9.6% in the year 2003-2004 to 3.4% in the year 2010-2011.

MR PAUL TSE (in Cantonese): *President, I have a pile of publicity leaflets in hand, clearly setting out the names and telephone numbers of the contact persons, and indicating that smokers can try the cigarettes on the spot and buy those cigarettes they like, and a customer can enjoy delivery service if he buys two boxes, and a customer can pay $10 less for each box if he buys five boxes or more. This seems to be a well-organized and systematic illicit cigarette sales activity. I believe it is not difficult to make arrests as this activity can nearly be described as "blossoming everywhere".*

President, the Secretary has stated in part (a) of his main reply that on a yearly basis, the number of illicit cigarette cases detected this year increased by about 60%; and on a monthly basis, the number of illicit cigarette cases detected in the first two months of this year increased by about 30%. Common sense tells us that the number of detected cases may only account for a small part of the actual activities. Now that there is a substantial increase in the number of detected cases, there may even be a more astonishing increase in the actual activities that lie beneath. Yet, the Secretary has stated in his main reply that

the illicit cigarette activities seem to have come under control and there is no sign of deterioration. Under what criteria has the Secretary drawn this conclusion? This seems contrary to the actual data and social phenomenon.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, illicit cigarette activities did experience some changes in the past few years. For example, peddling of illicit cigarettes on the street was the main form of activity at the early stage. These activities have totally been wiped out after sweeping operations, and there are only sporadic activities in some districts now. Precisely for this reason, lawless persons have switched to other methods in conducting illicit cigarette activities, including peddling via telephone order. Therefore, we must also change the enforcement methods and focus on combating the purchase of illicit cigarettes by telephone order.

Hence, I have just stated in my main reply that the C&ED established on 1 April this year a Telephone Order Task Unit comprising 15 officers dedicated to dealing with this type of activity. According to the available figures, since the new Telephone Order Task Unit commenced operation on 1 April, it has already detected 31 cases, seized approximately 1.9 million illicit cigarettes and arrested 34 people as in mid-June. Does the situation noticed by the Member prove that there are more activities still beyond our control? I believe that is true insofar as enforcement is concerned. Once these activities are brought to our attention, the authorities would put them under control and even wipe them out through enforcement action. We will continue to take follow-up action and review the operation when appropriate. And, we will also consider whether additional resources should be deployed for this task.

PRESIDENT (in Cantonese): Second question.

Community Treatment Orders

2. **MR CHEUNG KWOK-CHE** (in Cantonese): *President, it has been reported that on 3 May this year, a man suffering from mental illness suddenly became agitated at home and killed his family members before jumping off a building to his death. Subsequently it was confirmed that the man, who suffered*

from schizophrenia, had not participated in the Case Management Programme for people with severe mental illness after being discharged from the hospital, and had stopped visiting the clinics in public hospitals for follow-up consultations since September last year. Although hospital staff had contacted him, he refused treatment and tragedy eventually happened. The Hospital Authority (HA) published in 2010 the Report of the Review Committee on the Management and Follow-up of Mental Patients, which recommended, among other things, a study on whether Hong Kong should follow the practice of the United Kingdom and Australia to legislate on the introduction of Community Treatment Orders (CTOs). The CTOs in such countries require people with severe mental illness, but not to the extent of requiring hospitalization, to receive treatment in community and regularly attend follow-up consultations as well as participate in community activities, and those who breach such orders may be subject to mandatory hospitalization. In this connection, will the Government inform this Council:

(a) given that the Food and Health Bureau has started to study overseas experience and relevant legislation regarding the issue of CTOs since 2010, as well as to explore whether it is suitable to implement CTOs in Hong Kong, but after such a protracted study, the Food and Health Bureau has not reached a conclusion yet, of the reasons for that; when it can introduce the relevant bill to this Council for discussion;

(b) how it prevents the refusal of treatment by people with mental illness and the recurrence of similar tragedies; how it conducts public education to promote public understanding of the needs of the people recovering from mental illness and the proposal to introduce CTOs so that the public will support the proposal; and

(c) given that it has been reported that in order to save manpower, the HA intends to slow down the development of new services (for example, the expansion of psychiatric outreach services and case manager services for following up psychiatric patients), and among the more than 170 000 people seeking consultation from the psychiatric units of the HA at present, 40 000 are severe cases, whether it knows the detailed reasons for the HA slowing down the expansion of psychiatric services under such circumstances; how the

Government assists the HA in expediting the recruitment of psychiatrists and stepping up staff training to meet the urgent need of treating people with mental illness?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the Government is committed to promoting mental health of the public and will adjust the mode for delivery of mental health services having regard to social needs and international development. As the mental health policy and provision of related service programmes involve a number of Policy Bureaux and government departments, the Food and Health Bureau assumes the overall responsibility of co-ordination and works in close collaboration with the Labour and Welfare Bureau, the Department of Health (DH), the HA, the Social Welfare Department (SWD) and other relevant government departments.

(a) A CTO requires persons with mental illness to receive designated treatment while living in the community. As the proposal of implementing a CTO in Hong Kong will have far-reaching implications on both patients and society in a number of aspects, such as protection of patients' personal data and privacy, as well as human rights and the scope of authority of healthcare professionals, thorough consideration and extensive discussion by the public is necessary. The Working Group of Mental Health Services (the Working Group) under the chairmanship of the Secretary for Food and Health has set up a Focus Group on Community Treatment Order in 2010 to study the experience and the relevant legislation of overseas jurisdictions in detail and the applicability of CTO in the local context. As the study is still in progress, we are unable to set out an exact timetable for the legislation.

(b) The existing Mental Health Ordinance, as well as the medical and rehabilitation services and follow-up models provided by various departments through multidisciplinary and cross-sectoral collaboration, have effectively ensured that patients are given timely treatment and proper care in the course of recovery. When providing medical services and treatment to patients, healthcare professionals must take into account patients' preferences and rights. Doctors of public hospitals and clinics have upheld professional

ethics and spirit, which require them to seek consent from patients for treatment and respect patients' decision of not receiving treatment. However, the Mental Health Ordinance provides that where a patient is suffering from mental disorder of a nature or degree which warrants his/her detention in a mental hospital for observation; and ought to be so detained in the interests of his/her own health or safety or with a view to the protection of other persons, a court may order a patient to receive compulsory treatment in a mental hospital.

Besides, the HA also has an established mechanism in place to conduct risk assessment for patients of out-patient psychiatric clinics who fail to attend follow-up consultations as scheduled, so as to determine the appropriate follow-up actions and support for the patients. If these patients are high-risk patients who are categorized as priority follow-up cases, the HA will arrange community psychiatric nurses to conduct outreach visits in order to provide special follow-up for them.

As thorough consideration and extensive consultation is necessary to assess the applicability of CTO in the local context, our main task currently is to enable the public to understand the various service models and directions for the treatment of mental illness and support for mental patients and ex-mentally ill persons, as well as the importance of prevention and early treatment. We also endeavour to promote public acceptance of ex-mentally ill persons and enhance community support for them.

Towards this end, the HA promotes mental health through its psychiatric departments to raise public awareness of the importance of mental health. Its Child and Adolescent Mental Health Community Support Project promotes mental health among youngsters and their parents through the schools and community youth centres. The DH has included mental health in its public health education programme, whereas the SWD also conducts community mental health educational activities through the Integrated Community Centres for Mental Wellness.

(c) In view of the steadily increasing public demand for psychiatric services, the Government and the HA have continuously allocated additional resources and manpower to meet the service needs. In the past five years, the Government has increased funding allocation for mental health services by about 30%, from $3.39 billion in 2007-2008 to $4.58 billion in 2011-2012. Out of these expenditures, total government expenditure on the provision of the HA's psychiatric services (including in-patient services, specialist out-patient services, community outreach services and day hospital services) has increased from $2.67 billion in 2007-2008 to over $3.52 billion in 2011-2012, representing an increase of nearly 32%; and total government expenditure on the provision of the SWD's community rehabilitation services (including residential care services, community support services, day training and vocational rehabilitation services for ex-mentally ill persons) has also increased from $720 million to $1.6 billion during the same period, representing an increase of 47%.

On the manpower of psychiatric services, the net growth rate of manpower of the multi-disciplinary teams of the HA's mental health services (including doctors, nurses and allied health professionals) was over 400 in the past five years, representing an increase of about 18%.

In respect of the Case Management Programme, the HA has extended the programme from three districts to five districts in 2011-2012 and plans to further extend it to four more districts (Kowloon City, Southern, Central and Western and Islands) in 2012-2013. As at the end of March 2012, the HA has employed a total of 155 healthcare and allied health personnel with experience in community mental health services as case managers for the provision of intensive and personalized community support to some 10 000 patients with severe mental illness living in these districts.

Looking ahead, the HA will continue to deploy and adjust its manpower flexibly and devise service planning, having regard to the development of psychiatric services, so as to meet the community needs for mental health services.

MR CHEUNG KWOK-CHE (in Cantonese): *The Secretary has just now said that in the past five years, the authorities have provided additional resources for the treatment and rehabilitation of people with mental illness. Yet, money does not help secure sufficient manpower and space. Obviously, this is attributable to a lack of long-term planning.*

President, I attended a seminar of the 30th anniversary of the Sham Shui Po On On Kindergarten tragedy on Sunday. Over 400 people, including different stakeholders, attended the seminar on that day. They all hoped that the Government will establish a mental health development committee to formulate mental health policies and devise plans for mental health services.

I eagerly wish to ask the Secretary via the President when different stakeholders will be appointed to the Working Group under the chairmanship of the Secretary as members, with a view to converting it into the mental health development committee, thereby formulating mental health policies and devise plans for mental health services?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, over the past few years, the Working Group has absorbed a number of stakeholders, especially service providers, including experts from the DH, HA, academic institutions and voluntary organizations (that is, non-governmental organizations). We are supposed to head towards a number of directions: Firstly, to continue promoting mental health and public education; secondly, to roll out the service to the local community level by all means, so that ex-mentally ill people can reintegrate into the community as quickly as possible.

This is indeed a difficult task, and it takes a lot of time to convince the existing patients to accept the new approach. Therefore, we have adopted a two-pronged approach in the past years. We have taken care of chronic mental patients in hospitalization on the one hand, and dealth with new patients with the new approach on the other, with a view to helping them reintegrate into the community as quickly as possible.

Another important initiative is that the adding of all necessary new psychiatric drugs to the basic Drug Formulary, so that all patients can use these drugs. We are also aware that the changes in drugs have brought benefits to

many people with mental illness in various respects. Therefore, our efforts in this regard will continue.

Mr CHEUNG has asked if we need to establish another institution to deal with mental health policies, we hold that we should stick to the present approach by all means. Certainly, the next-term government may have other considerations, and I do not rule out the possibility that Mr CHEUNG's proposal will be considered. And yet, the most important thing is that we do not wish to see any policies affecting members of the public or people with mental illness, and rendering them unable to receive proper care and services in the course of treatment and rehabilitation.

PRESIDENT (in Cantonese): Mr CHEUNG, has your supplementary question not been answered?

MR CHEUNG KWOK-CHE (in Cantonese): *President, the part which the Secretary has not answered is, we really do not wish to see the Government independently dealing ……*

PRESIDENT (in Cantonese): Please stop giving comment anymore.

MR CHEUNG KWOK-CHE (in Cantonese): *It should set up a universal …… The Secretary has not answered when the Working Group will be converted into …… The Secretary should at least inform us if such conversion is feasible, not to mention the timetable. And yet, the Secretary has not given an answer. He merely said that the next-term government may consider the relevant proposal.*

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

MR CHEUNG KWOK-CHE (in Cantonese): *He has not answered if the Working Group will be converted into a universal committee?*

PRESIDENT (in Cantonese): The Secretary has already given an answer.

MR CHAN HAK-KAN (in Cantonese): *President, the tragedy is probably caused by the refusal of the patient concerned to receive treatment. In the community, we were often told by family members of patients that they not only worried about the patients' refusal to attend follow-up consultations but also their refusal to take medicine. Some patients reflected that the medicines provided by the Government have severe side effects and are of poorer quality, and they often became dull, reacted slowly and felt drowsy after taking them. May I ask if the Government will provide drugs of better quality for people suffering from mental illness so as to increase their incentives to take medicine and lessen the side effects, thereby reducing the possibility of the recurrence of similar tragedies?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, first of all, I would like to highlight two points. Firstly, taking those medicines will not increase the propensity for violence of people with mental illness but may only cause complications or side-effects. And yet, this will not affect their behaviour, but only make them feel uncomfortable.

Secondly, we have noticed that many of these unfortunate tragedies are not necessarily caused by such simple reasons as the patients' failure to take medicine or attend follow-up consultations. Many mental illnesses are acute in nature. Thus, sometimes even if the patients have attended follow-up consultations and taken medicine, there may be factors which cause an acute change of their conditions. Many experts consider that while treatment will be provided by all means, this cannot completely eliminate the occurrence of similar tragedies.

Regarding the use of drugs, new drugs have been added to the HA's Drug Formulary over the past years, hence patients can now use most of the drugs. And yet, the patients' drugs must be determined by the psychiatric experts. This is not an administrative decision. If a patient is taking old drugs which work well on him and help stabilize his condition, the doctor may probably continue to prescribe the same drugs to him. If the drugs taken by a patient have severe side effects, the doctor will naturally introduce new drugs for the treatment of the patient.

DR LEUNG KA-LAU (in Cantonese): *President, regarding the CTOs, I do not think any people or political parties are against it. Rather, manpower is the problem. Should we introduce the CTOs, there must be sufficient manpower to follow up on the cases of people with mental illness. Otherwise, the legislation will be deemed useless.*

Noting that Hong Kong has 40 000 people with severe mental illnesss, I believe the case manager establishment should probably be 1 000. I have put a question on case managers to the Secretary a few months ago: Is the quick turnover of case managers attributable to a lack of experienced manpower in Hong Kong or the poor remuneration package and insufficient establishment of the HA, which has resulted in a heavy workload whereby each case manager has to handle more than 50 cases?

Therefore, may I ask the Secretary — though this has been asked a few months ago — the turnover rate of these case managers? Despite that the number of case managers has increased from some 130 a few months ago to currently 155, was there a high turnover? Does this reflect any problem with the remuneration package?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not have any information about the turnover rate in hand, but I will provide Members with the relevant information once available (Appendix I). However, as far as we understand it, case managers must possess certain experience and qualifications. Neither fresh graduates nor people with only one or two years' experience would be appointed. This is because case managers must work independently in addressing the individual needs of people with mental illness. Very often, they have to decide on their own how to deal with the problems. We will, in principle, recruit experienced healthcare personnel, mostly nurses and occupational therapists, as well as social workers. We will therefore be particularly cautious when doing the recruitment to ensure that the suitable persons are appointed.

In terms of work, I trust that the case managers should have great job satisfaction as they can help the patients direct and resolve their personal problems. Therefore, I do not worry about no one taking up the job. Rather, we believe people who are suitable for the job in the market have been swiftly

recruited by us. The next step is therefore to provide training to further increase manpower. We intend to roll out the Case Management Programme to other districts and hope that in the future, those 40 000 people with severe mental illness will all be taken care of under the Programme.

MR ALBERT CHAN (in Cantonese): *President, the implementation of the CTOs hinges on two factors. Firstly, just as Dr LEUNG has said, it is whether the management and support of case managers are adequate, and secondly, it is whether the awareness of the local community can appropriately tie in with the new arrangement. If both cases show inadequacy, the tragedy and disaster brought about may outweigh the double gains (meaning both the local community and patients receive appropriate care and attention). How can the Secretary ensure that the basic aspirations can be fulfilled in these two respects — namely adequate professional support and the awareness and recognition of people in the local community?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, this is a very good supplementary question. The CTOs are introduced from abroad, and so far, there is no conclusion of whether they are good or bad. However, from the healthcare personnel's point of view, they are given greater power to intervene and take action, such that the patients can receive treatment or avoid developing certain complications.

From the perspective of human rights, a study must be conducted. If a person suffers from mental illness, we may leave it to a professional to decide whether treatment is necessary, where to receive treatment and whether his behaviour should be restricted. In that case, we consider that an extensive consultation is therefore warranted.

From the local community's point of view, do we accept the new policies? Noting that Hong Kong is densely populated and people are living close together in many housing estates and private housing developments, under these circumstances, we certainly have to thoroughly consider if the treatment of these patients in the community is acceptable to the local community.

Earlier, a Member was right in saying that many means of support must be promptly provided. However, as we may be aware, even if such means of support are promptly provided, the patients may not be able to use them at any time. Therefore, we must be well-prepared in this regard. After examining and discussing with the experts, we also agree that the successful implementation of the CTOs in Hong Kong hinges on the adequacy of case managers or professionals in the local community. It is precisely because of this reason that we find this is not the time to provide the timetable as to when the relevant legislation will be introduced.

PRESIDENT (in Cantonese): We have spent more than 22 minutes on this question. Third question.

Death of a Chinese Dissident

3. **MR KAM NAI-WAI** (in Cantonese): *President, the death of Mr LI Wangyang, a democracy activist on the Mainland, caused 25 000 Hong Kong people taking to the streets to participate in a march on 10 June this year to demand an investigation by the Central Government into the cause of his death. On 13 June this year, more than 1 500 members of the public participated in the memorial gathering for Mr LI outside the old Legislative Council Building. The Chief Executive and the Secretary for Food and Health have also indicated that there are questionable points in the case of Mr LI. Furthermore, after the death of Mr LI, it has been reported that his family members are under continuous surveillance, or have even been put under house arrest. In this connection, will the Government inform this Council:*

(a) whether it knows which Mainland authorities had received the views of Hong Kong people on the aforesaid incident relayed to by the Chief Executive; the channels through which the authorities concerned received the views; whether the viewpoints of the Chief Executive and the Secretary for Food and Health that the cause of Mr LI's death is questionable had been included in such views;

(b) given that the State President will come to Hong Kong to attend the ceremony to celebrate the reunification of Hong Kong on 1 July this year, whether the Government of the current term and that of the

new term will relay Hong Kong people's views on the aforesaid incident to the State President; if they will, of the details; if not, the reasons for that; and

(c) given that it has been reported that quite a number of members of the public are concerned about Mr LI's family members being put under surveillance and house arrest, whether the Government will relay to the Central Authorities such views of the public and urge the Central Authorities to set Mr LI's family members free?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, on behalf of the Administration, I give the following consolidated reply to the three parts of the question raised by Mr KAM Nai-wai:

(a) The Administration notes that people from various sectors of the community have expressed concerns about the incident concerning Mr LI Wangyang in different ways recently. Under the principle of "one country, two systems", the prime responsibility of the Chief Executive is to safeguard the right of expression enjoyed by the people of Hong Kong.

The Chief Executive shared his views on the incident at the Question and Answer Session in the Legislative Council held on 14 June and made it clear that he had already conveyed the views of the people of Hong Kong to the Central Authorities. The Administration also notes that some deputies of the Hong Kong Special Administrative Region (SAR) to the National People's Congress (NPC) indicated that they had conveyed the relevant views to the Central Authorities.

(b) The Chief Executive reports the latest social developments in Hong Kong and the views of the people of Hong Kong on issues of public concern at each of his meetings with the state leaders.

The Chief Executive-elect has also indicated that he would convey to the Central Authorities any issues relating to our country which were of concern to the people of Hong Kong. He will also report the

latest situation in Hong Kong when he meets with the state leaders, including issues of public concern and the views of the public.

(c) The SAR Government has been acting in accordance with the Basic Law and the principle of "one country, two systems" to safeguard the freedom and right of expression enjoyed by the people of Hong Kong and conveys the views of the Hong Kong community to the Central Authorities from time to time.

MR KAM NAI-WAI (in Cantonese): *President, in this tragedy of Mr LI Wangyang, the request of the Hong Kong people is actually very simple. That is, they request those having power and influence to conscientiously relay the questionable points concerning Mr LI Wangyang's death to the Central Authorities. President, we do not wish to be like some Hong Kong deputies to the NPC, who had no courage to express their attitude and did not dare to write to the Central Authorities at first, but after the Hunan authorities stated explicitly that the incident would be investigated, they then made a U-turn one after another.*

President, State President HU will come to Hong Kong on 29 June. I would like to ask the Government: Will the Chief Executive, the Chief Executive-elect and the SAR Government directly relay the questionable points concerning Mr LI Wangyang's death to the state leaders including President HU Jintao, and inquire when his family members will be set free?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as I have said in my main reply, the Chief Executive has conveyed Hong Kong people's views and concerns regarding the incident of Mr LI Wangyang to the Central Authorities. Earlier on, the SAR Government has actually established a regular communication mechanism with the Mainland authorities, and the Office of the Chief Executive has also reflected Hong Kong people's views to the Central Government through the usual channels.

Mr KAM Nai-wai has just asked whether the Chief Executive or the Chief Executive-elect will personally or directly relay to President HU Jintao again Hong Kong people's views on the different aspects of this incident when President HU comes to Hong Kong later. As I said just now, previously, the

Chief Executive has reflected the public views through the usual channels. Various sectors of the Hong Kong community have also expressed their opinions through different platforms, while the media has given extensive coverage of the incident. Hence, we believe that the state leaders fully understand Hong Kong people's views.

Mr KAM has also mentioned just now that Hong Kong people have shown much care and concern about the present situation of Mr LI Wangyang's family members. I would like to say that being the leader of the Hong Kong SAR, the Chief Executive, who lives in Hong Kong, appreciates and understands very well Hong Kong people's views on the incident of Mr LI Wangyang and their views on other matters in connection with this incident. He has already fully relayed all the views of Hong Kong people to the Central Authorities.

As regards the Chief Executive-elect, as I have said in my main reply, he has remarked that he would convey to the Central Authorities any issues which were of concern to the people of Hong Kong or relating to our country. He will also report the latest situation in Hong Kong, including issues of public concern and their views, when he meets with the state leaders.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR KAM NAI-WAI (in Cantonese): *President, just now I asked the Secretary, because the Chief Executive said that there were questionable points in this incident. I am not asking …… I am asking whether the Chief Executive will relay Hong Kong people's views ……*

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

MR KAM NAI-WAI (in Cantonese): …… *my question is, given the Chief Executive's remark that he felt there were questionable points in the incident, will he directly convey this view to President HU Jintao when the President comes to Hong Kong?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, Mr KAM mentioned the remark of the Chief Executive that he felt there were questionable points in this incident. At the Question and Answer Session in the Legislative Council on the 14th of this month, the Chief Executive said that he fully understood the views of the people of Hong Kong, and he also found questionable points in the incident. At that time the Chief Executive said that under the principle of "one country, two systems", his prime responsibility as the Chief Executive was to safeguard Hong Kong people's right to express such views, and he had also reflected Hong Kong people's feelings to the Central Authorities. It was believed that the Mainland authorities were very clear about Hong Kong people's views. Hong Kong people thought that there were questionable points in the incident. At that time the Chief Executive indicated that he concurred with the Hong Kong people's view and had already conveyed it to the Central Authorities. The Chief Executive believed that the authorities would deal with this issue seriously in accordance with the law.

I remember that at that time Members expressed much concern and wished to ask the Chief Executive what exactly were the questionable points mentioned by him, or wished to ask the Chief Executive in further depth. At that time the Chief Executive already stated repeatedly with clarity that he had said what he had to say then, and he had nothing to add. So I cannot add anything for him.

DR MARGARET NG (in Cantonese): *President, this is not the general opinion of the general public in Hong Kong. The utmost concern of Hong Kong people is not only the lack of a clear truth of the LI Wangyang incident but also the present whereabouts of his family members. Can the truth indeed be reflected after the report is published? Hong Kong people are highly concerned about this.*

President, speaking of the communication with the Central Authorities, what we request is not one-way communication. Our request is not merely for the Chief Executive or Chief Executive-elect to relay views to the Central Authorities and for the Central Authorities to learn about the relevant views from the newspapers. What we request is not such general communication. Hong Kong people urgently need an answer and response. As we have noted, signature campaigns conducted in the street have received very active response.

Now, given the newspaper report that the incumbent Chief Executive and the Chief Executive-elect will meet with the state leaders together, I would like the Administration to tell us whether we will get any response. When will the Mainland authorities give us a response in regard to the truth of Mr LI Wangyang's death and the present whereabouts of his family members?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, concerning the investigation into the incident of Mr LI Wangyang, if I remember rightly, Mr LI Gang, Deputy Director of the Liaison Office of the Central People's Government in the Hong Kong SAR (LOCPG), indicated on 14 June that as far as he understood it, the public security authorities in Hunan had formed a criminal investigation team with experienced experts to conduct further investigation into the matter and would publish the investigation results to the community in due course. We believe that the relevant authorities will publish the investigation results once they are available. However, so far we have not yet received any news about the investigation results. Nevertheless, since Deputy Director LI Gang has said so, I truly believe that the relevant authorities will surely give an open account to the public once the investigation report is completed.

PRESIDENT (in Cantonese): Dr NG, has your supplementary question not been answered?

DR MARGARET NG (in Cantonese): *The Secretary has not answered the part about the whereabouts of Mr LI Wangyang's family members.*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, regarding the whereabouts of his family members, as I have said earlier, the Chief Executive fully appreciates Hong Kong people's views on this incident and matters in connection with this incident, and he has thoroughly relayed them to the Central Authorities. As far as we understand

from the remarks given by LOCPG's Deputy Director LI Gang on 14 June, the relevant authorities should be conducting an investigation which focuses on Mr LI Wangyang's death. As for whether the results released in the future will involve other matters, President, we still do not have any information at the moment.

MR CHEUNG MAN-KWONG (in Cantonese): *President, the Secretary said in part (a) of her main reply that the Chief Executive had already conveyed the views of the people of Hong Kong to the Central Government, and now the Chief Executive is in Beijing. May I ask if the views conveyed by the Chief Executive include the four utmost concerns of Hong Kong people? First, as Hong Kong people have queried that the "alleged suicide" of LI Wangyang was actually a murder, did the Chief Executive relay Hong Kong people's anger? Second, did he relay Hong Kong people's demand for an impartial investigation into the LI Wangyang incident and punishment for the killers, including Hunan officials who might be involved in the case? Third, did he relay Hong Kong people's concern over the forced disappearance of his family members and forced silence of his close friends? Fourth, did he relay Hong Kong people's desire for HU Jintao to openly express a fair comment on the LI Wangyang incident to Hong Kong people when he comes to Hong Kong? If he did, which of the above points did he relay? If not, will the Chief Executive be requested immediately to relay these points in Beijing?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as I have said earlier, the Chief Executive knows Hong Kong people's views on this incident, including the opinion that there are questionable points in the case, and the Chief Executive also concurs with this view of the Hong Kong people. The Chief Executive has already fully relayed Hong Kong people's views to the Central Authorities. As for the specific details of the views or opinions relayed by him, President, I do not have any information at hand, so I cannot provide Mr CHEUNG with further information here. Nevertheless, I believe we will be able to further understand the whole course of the incident when the investigation results are released later.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR CHEUNG MAN-KWONG (in Cantonese): *She did not reply whether the Chief Executive, who is in Beijing right now, will relay to the state leaders (including President HU) the four points of views of the Hong Kong people brought up by me just now.*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the Chief Executive is now in Beijing, but as far as I know, this morning, after he had attended the 15th Anniversary Achievement Exhibition and met with the Vice-President, he then left the venue. Not having any detailed information about his itinerary in Beijing, I am unable to tell whether he will meet with President HU. I only know that he met with the Vice-President this morning. As for the specific conversations in their meeting, President, since I am now in Hong Kong, I am really unable to get hold of the actual situation.

MR CHEUNG MAN-KWONG (in Cantonese): *President, just now my supplementary question was whether he would relay such views to the Central Government. Regardless of his location and his whereabouts in Beijing, these voices already exist. Will he relay these four major views of the Hong Kong people?*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I do not know what ideas or intentions the Chief Executive has on his mind. Thus I cannot represent him here to answer Mr CHEUNG whether he will relay these views or what he intends to do next.

MR JAMES TO (in Cantonese): *President, it is pointed out in part (a) of the main reply that on 14 June, the Chief Executive said that he had already conveyed the views of the people of Hong Kong to the Central Authorities, while it is pointed out in part (b) that the Chief Executive will relay the people's views on issues of public concern at each of his meetings with the state leaders. The Chief Executive is in Beijing right now, and President HU will come to Hong Kong later. Given that the Chief Executive will relay issues which are of concern to Hong Kong people at each of his meetings with the state leaders, does it include these two meetings? If Hong Kong people keep expressing concern over this incident with anger, will the Chief Executive relay it to the state leaders in these two known meetings?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as I have indicated in the main reply, generally speaking, the Chief Executive reports the latest social developments in Hong Kong and the views of the people on issues of public concern at each of his meetings with the state leaders. When President HU later comes to Hong Kong, the Chief Executive will certainly meet with him and report to him the present situation of Hong Kong. This is the Chief Executive's usual practice. Now there are still several days before President HU's arrival at Hong Kong. Different things may happen in Hong Kong, and the incident of Mr LI Wangyang may also have new development. With regard to the Chief Executive's decision on what to report and where to put the focus of concern during his meeting with the State President, I believe the Chief Executive may need to ponder on it further. At this moment I really have no grasp of the actual details.

MS MIRIAM LAU (in Cantonese): *President, the Secretary has neither answered Members' questions nor addressed our concerns at all. With such a short main reply, the Secretary has said four times that public views on important social issues would be conveyed, but when Members raised supplementary questions, the Secretary said that public views had been fully conveyed. However, she then advised that apart from relaying the public opinion that there were questionable points in the incident, she did not know which public concerns the Chief Executive or Chief Executive-elect would relay or had relayed to the Central Authorities. Actually, apart from considering that there are questionable points, members of the public have requested a comprehensive*

investigation as to whether Mr LI Wangyang died of suicide or homicide and demanded the release of the results. Besides, members of the public are concerned about the safety of Mr LI Wangyang's family members. These are the public views and opinions. If the Secretary does not know what views the Chief Executive has relayed to the Central Authorities, how could she say just now that the views had been fully conveyed? What exactly is the actual situation? If such views have not been reflected, will the Secretary request the Chief Executive to relay the public concerns and views presented by me and the Honourable colleagues just now?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, being the Acting Secretary commissioned to come to answer this main oral question and Members' supplementary questions today, of course I have communicated with the Office of the Chief Executive and the Chief Executive-elect's Office beforehand in order to get information for making responses in the Council. I have already given Members an account of the information collected. The message received by me is that earlier on, the Chief Executive has fully conveyed Hong Kong people's views and opinions to the Central Authorities. As regards what exactly the Chief Executive will say when President HU comes to Hong Kong, I believe he has to watch the latest development of each issue these several days before making up his mind. This is about something in the future. I think he has to consider further.

With regard to Hong Kong people's wish for the release of the investigation results as mentioned by Ms LAU just now, Deputy Director LI Gang has said that the relevant authorities will publish the investigation results to the community in due course.

Members have raised questions on very specific details today. I will certainly relay them to the Office of the Chief Executive after the meeting so that they will note that Members are still highly concerned about many different issues and wish to know more specific details, so as to clear their doubts and facilitate them to address the care and concerns of the general public of Hong Kong in various matters.

MS EMILY LAU (in Cantonese): *President, Hong Kong people are highly concerned about the "alleged suicide" of Mr LI Wangyang. Regrettably, the*

vast majority of Members in the Democratic Alliance for the Betterment and Progress of Hong Kong and Hong Kong Federation of Trade Unions are not here to listen to the Secretary's reply and represent the public to follow up the matter.

President, a number of Members have asked how the Chief Executive and Chief Executive-elect have expressed Hong Kong people's concerns. The Acting Secretary said that she had no idea. President, my supplementary question is: Can the Acting Secretary request the Chief Executive and Chief Executive-elect after the meeting to submit documents to the Legislative Council to explain clearly how they have relayed Hong Kong people's concerns so that we can see if they have done any shoddy work?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, regarding the point which Ms Emily LAU has just raised, as I have said earlier, I will relay to the Office of the Chief Executive and the Chief Executive-elect's Office the supplementary questions Members have put forward today and Members' expressed wish to receive further specific information. I have noticed that Members will follow up this incident on the agenda of the Council meeting in July. In July, the Chief Executive-elect will assume office. I believe he will see what he can revert to you in response to Members' concerns.

As for Ms LAU's earlier question on whether documents can be submitted, since Ms LAU has made this proposal or request, of course I will relay it to the two Offices to see if they can prepare a document in response to Ms LAU's proposal in the coming days.

PRESIDENT (in Cantonese): We have spent almost 22 minutes on this question. Fourth question.

Measures to Encourage Disposal of Food Waste by Appropriate Means

4. **MR WONG SING-CHI** (in Cantonese): *President, an environmental group had earlier conducted an investigation into the procedures adopted by the four major chain supermarkets (supermarkets) in Hong Kong for disposing leftover food (food waste), and found that the supermarkets dumped food which*

was still edible as trash, and deliberately destroyed the food packaging and sprinkled water on the food to prevent scavengers to take away such food. The group estimates that the supermarkets dispose of nearly 90 tonnes of food waste daily and criticizes their wasteful behaviour as unscrupulous, which aggravates the disparity in wealth distribution in society as well as the pressure on waste management in Hong Kong. In this connection, will the Government inform this Council:

(a) whether it knows the criteria adopted by the supermarkets for determining if the aforesaid procedures for the disposal of food waste are most appropriate; whether the supermarkets have provided any guideline or rule for their staff to set out the procedures for disposing food which is still edible; if so, of the details, and whether deliberately destroying the food packaging and sprinkling water on the food before disposal, and so on, are included; whether it will request the supermarkets to make public such guideline or rule;

(b) given that the group suggests supermarkets to donate food which is still edible to food banks, and recycle those inedible food for use as compost or animal feed, of the policies or measures the authorities have put in place to encourage supermarkets to dispose of food waste by sensible, reasonable and lawful means (including whether they will formulate guideline, code of practice or charter on donation of food which is still edible as well as reduction of food waste by supermarkets); whether they have made reference to the relevant legislation on food donation in overseas places to formulate exemption clauses for food donors (for example, excluding the liability of the donors in case the beneficiaries feel sick after consuming the food), so as to encourage more organizations to donate food to the people in need; and

(c) of the measures the authorities have put in place to encourage various sectors in the community (for example, ordinary families, the commercial and industrial sectors and the construction sector, and so on) to reduce at source food waste and other municipal solid waste they produced, and recover and recycle such waste; given that the public consultation on charging for municipal solid waste ended

on 10 April this year, of the current progress, details and specific timetable of the follow-up work?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have to thank Mr WONG Sing-chi for his question. The volume of municipal solid waste that needs to be treated after recovery in Hong Kong is about 9 000 tonnes per day, of which over 800 tonnes are food waste from the commercial and industrial sectors (including the amount from supermarkets we mentioned earlier). The Government is handling the problem of food waste under a multi-pronged approach. Firstly, we encourage the avoidance and reduction of food waste at source through raising the awareness of the public and relevant trades on such aspects by promotion and education. For examples, we promote the "Save Food Day" and encourage the adoption of a simpler Chinese banquet. Working with the commercial and industrial sectors, we have also implemented the Food Waste Recycling Partnership Scheme since 2010. We promote good food waste management practices by jointly producing a guideline on food waste management and source separation of food waste with the commercial and industrial sectors to assist them in avoiding and reducing food waste, and in separating food waste at source as far as possible. On the other hand, we have worked on the domestic side to deal with food waste. For instance, we launched the Scheme for Food Waste Recycling for Housing Estates in 2011 through the Environment and Conservation Fund(1) (ECF) to subsidize housing estates to organize promotion and education programmes for food waste reduction and separation of domestic food waste at source, and carry out on-site recovery and treatment at housing estates. We consider that unavoidable food waste should be recovered and recycled as far as possible.

Separately, we are developing the Organic Waste Treatment Facilities (OWTFs) by phases. Source-separated food waste is recycled and converted to useful resources such as compost and biogas. The first phase of the OWTFs will be developed in Siu Ho Wan of North Lantau to treat source-separated food waste

(1) The Government has implemented numerous projects on food waste reduction and recycling through the ECF, including subsidizing non-government organizations to organize "Save Food Day" and procure electric composters. The ECF subsidizes existing schools to carry out the necessary upgrading works and install the necessary equipment for on-site lunch portioning. It also provides subsidy to private housing estates to collect and treat food waste at source, and to organize related education and promotion activities. In the past three financial years, the ECF put in $140 million to subsidize 180 projects promoting food waste reduction and recycling and the related education and promotion efforts.

from the commercial and industrial sectors at a capacity of 200 tonnes per day, with the target of commissioning the facilities in 2015. We also commenced a study in late 2011 on the development of the second phase of the OWTFs at Shaling in North District. We plan to complete the Environmental Impact Assessment for the project in mid-2013. The facilities are expected to be completed in 2017. In addition, the Government started searching for suitable sites throughout Hong Kong in 2011 with a view to developing more regional OWTFs. Subject to the results of the site search exercise, we will further look into the feasibility and conduct detailed analysis.

Our reply to the question raised by Mr WONG Sing-chi is as follows:

(a) We are aware of the earlier report on the way supermarkets handle surplus food. We consider that dumping of edible food is not merely a wasteful act; it will also increase the pressure on handling of waste. As such, we encourage the relevant trade to put such surplus food to good use and, through appropriate arrangement, to minimize the disposal of edible surplus food. To this end, we have been implementing the Food Waste Recycling Partnership Scheme to encourage and provide support to the commercial and industrial sectors to participate in food recycling. Participants of the Partnership Scheme also include individual supermarkets.

The Environment Bureau has also particularly contacted several supermarkets and has met with their management to express clearly the concern of the Government and public at large and the expectation on the supermarket trades to minimize disposal. We have also urged the supermarket trade to review its practice of handling individual types of food. It is understood that a number of non-profit organizations are running food donation programmes (covering edible surplus food) with the support and participation of the trade. We expressed during the meeting our wish that the supermarkets can actively consider collaborating with non-profit organizations in different areas. The Environment Bureau is willing to provide assistance and line up with suitable organization to facilitate such collaboration aiming to minimize the dumping of edible food by supermarkets.

(b) We understand that there are already a number of food donation programmes in the community. Their operators and donors have found their appropriate modes of operation to handle various practical arrangements and define their respective responsibility. At the same time, the Government will continue to step up its efforts in waste reduction at source including considering policy tools like municipal solid waste charging. We believe that if municipal solid waste charging is implemented in commercial and industrial sectors, there will be an economic incentive for enterprises, including the supermarket trade, to minimize the disposal of waste. It will also help promote the donation of surplus food or food waste recycling. Separately, we will continue to develop the OWTFs to provide advanced facilities for the proper treatment of food waste.

(c) The three existing landfills in Hong Kong will exhaust their design capacity one by one in the mid and end 2010s — or indeed starting from 2014. Facing the imminent waste management problem, the Government announced a specific action agenda in early 2011 to resolve Hong Kong's waste problem under a three-pronged approach that includes strengthened actions to reduce wastes at source; introduction of modern technologies to upgrade our waste treatment capability, and timely extension of our landfills. In the meetings of the Panel on Environmental Affairs in March and April 2012, we reported in detail to the Legislative Council the latest progress of various measures in relation to waste reduction at source, recycling and recovery, as well as the end-of-pipe treatment of waste.

As regards the promotion of waste reduction and recovery, we are now preparing the legislative proposals for the extension of the Environmental Levy Scheme on Plastic Shopping Bags and the introduction of the producer responsibility scheme on waste electrical and electronic equipment. There are also various ongoing community recycling projects, which are subsidized directly or through the ECF. As for municipal solid waste charging, we are pleased that the public consultation completed in April reveals that over half of the respondents are in favour of the introduction of a charging scheme to promote waste reduction in Hong Kong. We

are now analysing the views collected during the public consultation in order to finalize recommendations for the way forward as soon as possible, and report to the legislature.

MR WONG SING-CHI (in Cantonese): *President, in our view, such practices of these supermarkets reflect that the wealthier they are, the more unscrupulous and unethical they are. Why? Nowadays, supermarkets spend lavishly on newspaper advertisement. However, in the handling of unsold goods, they adopt intimidating tactics to coerce suppliers to make coping offers, so that unsold goods will be returned and refunded. Such practice is terribly unscrupulous, making the operation of small traders more distressed. Worse still, a supermarket stated clearly in the newspaper that it would not donate surplus food or give it out to the poor. I do not know whether the reorganization proposal of Mr LEUNG Chun-ying on the forming of five Secretaries of Departments and 14 Directors of Bureaux will include an Environmental and Welfare Bureau. If yes, I think only this will make his proposal more meaningful. However, President, I would like to ask the Secretary about the many issues he said earlier that he had discussed with supermarkets, as well as the arrangements for handling food waste he had discussed with many social services organizations, including the feasibility of donating such food to food banks. However, the supermarket concerned dares to announce in public that it will not do so. May I ask the Secretary of the result of the work he has carried out? Are those supermarkets giving you cold shoulder, and they will continue disposing of surplus food and unscrupulously adopt such unethical practices?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I would like to thank Mr WONG Sing-chi for his supplementary question. First, let us look at the issue from the perspective of environmental protection. Regarding waste generated by supermarkets and other enterprises, if the waste to be disposed of is still edible, as in the case of food, the volume of such waste could be reduced by recovery or by giving it to people in need. I believe the public will definitely support such move no matter it is out of environmental protection or welfare concerns. If these enterprises can put forth certain measures to reduce this type of waste, we will offer them encouragement. I also notice that certain enterprises have mentioned in their advertisement that they will reduce

surplus food by cutting prices to promote sales, or they will adopt better management of the supply chain to minimize wastage. From the perspective of environmental protection, these are certainly desirable measures. As such, we encourage such practices in terms of greening policies.

However, we believe that there will be surplus food no matter how things done. This is rightly the reason we have to contact supermarkets recently to indicate to them these are indeed voluntary organizations in the community that may collect the surplus food. Some of these organizations are subsidized by the Government, such as food banks. They are funded by the Government to purchase food while other organizations run on their own resources. No matter whether the organizations are subsidized by the Government or self-financed, they may be receivers of edible food donated by supermarkets. We have not only conveyed this message to various enterprises running chain supermarkets, we are also willing to act as liaison for them. Whenever we can, we are more than willing to do so.

We have so far not heard any enterprise indicating that it will not participate in those schemes at all. Some enterprises have indicated that they will give them consideration and some have even stated that they will try to implement those schemes. Therefore, we consider that discussion led by the community have achieved a positive effect in prompting supermarkets to be the source of such food and voluntary organizations to be the receiver and then the distributor.

MR TOMMY CHEUNG (in Cantonese): *President, I would like to ask the Secretary a question. There are various difficulties encountered by different commercial activities. However, in his reply, I do not see any hint of considering providing tax concession. I always think that it is an effective measure but the Secretary never adopts this measure. For instance, the Government may offer tax concession to supermarkets for their food donation in terms of tonnes or types of food. All these enterprises are making profit, so the provision of tax concession will be a factor of consideration to them. May I ask the Secretary whether he will consider providing tax concession to these enterprises if they donate the food?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, at present, tax concession is not provided to enterprises for waste disposal or waste recovery. I think the issue may not necessarily be handled by means of taxation, for we notice that enterprises will benefit in some measure in their operation if they can reduce waste generated in the course of operation. First, at present, commercial and industrial waste in Hong Kong is not recovered by the Government. Enterprises have to employ waste collectors or organizations to handle the waste at a cost. Hence, the reduction of waste and promotion of recovery means saving costs.

Moreover, from the macroscopic perspective of society, if such useful resources can be given to the needy, as mentioned by Members earlier, it will not only enable enterprises to fulfil their social responsibility but also promote a caring society. Hence, I think matters involving these two aspects will be easily implemented and achieved, no matter whether there is any taxation arrangement.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR TOMMY CHEUNG (in Cantonese): *President, the Secretary has definitely not answered my question. My supplementary question is straightforward, whether or not other factors are involved ……*

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

MR TOMMY CHEUNG (in Cantonese): *…… why does the Government not consider offering tax concession? Is the Secretary willing to consider it?*

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

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have made it very clear earlier. For the time being, we do not have such an taxation

arrangement, and we consider better alternatives are available. From our recent contacts with these enterprises, we have the understanding that they are willing to consider other alternatives.

MR CHAN HAK-KAN (in Cantonese): *President, my question focuses on the handling of food waste. The Government said that the treatment plant for food waste at Siu Ho Wan would be completed in 2013 or 2014 and would come into operation. However, in view of the attitude and practices of supermarkets in this incident, I am worried that despite the opening of the food waste treatment plant, some enterprises will not be willing to send the commercial and industrial food waste to the plant, and the 800 tonnes of commercial and industrial food waste generated per day will still be disposed of at the landfills. May I ask the Secretary what measures, either by incentive or by force, will be adopted to make large commercial organizations send food waste to the food waste treatment plant at Siu Ho Wan?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, first, regarding the treatment of commercial and industrial waste at present, as I said earlier in reply to Mr Tommy CHEUNG's supplementary question, enterprises must pay the cost for the handling of such waste. Hence, the availability of such facilities will be a convenience to them. For example, all the food waste is handled by a centralized means.

Moreover, as I mentioned in the main reply, apart from providing these facilities to reduce costs, our next step is that if waste charging is introduced in future, an economic incentive will also be provided for enterprises, making them consider recovery and even donation when generating a large volume of such waste, so as to reduce costs or charges. Perhaps for this reason, when we carried out the consultation on waste charging at the beginning of this year, many people considered waste charging a feasible measure. And, some people proposed that charges might first be imposed on commercial and industrial waste. This can generally reflect the views of the public.

MR KAM NAI-WAI (in Cantonese): *Just now, Mr WONG Sing-chi had this newspaper in his hand. I wonder whether the Secretary has read it. What did*

the unscrupulous ParknShop say? It indicated that it would not donate the food, and made a very harsh remark, saying "we throw away the food not for no reason" — not for no reason. In other words, the disposal of 90 tonnes of food per day is not for no reason, and it is justified to do so. The Secretary said in his reply that there were already a number of food donation programmes in the community and successful modes of operation have been put in place.

Secretary, to counter unscrupulous supermarkets like Parknshop, do you consider the current modes of operation successful? Is it a success that 90 tonnes of food are disposed of everyday? Will you urge the public to boycott these unscrupulous supermarkets, so that those programmes will really operate successfully? If not, how will those programmes reduce 90 tonnes of food waste per day?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Each enterprise has to be responsible for its behaviour, particularly in the face of an increasing awareness of environmental protection in the society as a whole. As such, I do not intend to respond to this question for a particular enterprise. In fact, over this recent period, we did invite enterprises, including supermarkets, to participate in the various schemes mentioned earlier, such as the Food Waste Recycling Partnership Scheme on trial at Kowloon Bay.

Regarding the question of Mr KAM Nai-wai, as I indicated in the main reply, very often, the donors and the receivers have their own worries. Take the more successful case, the hotel industry, as an example. They are also worried that improper storage of donated food may affect the freshness of food, thus leading to legal liability or food safety concerns.

Regarding the successful modes of operation I mentioned in the main reply earlier, we have actually seen that certain donors and receivers have arrived at proper arrangements clear to both parties in terms of legal and handling matters, through discussion, mutual understanding, and specific measures. In this connection, the successful modes of operation I mentioned have exactly provided a golden opportunity. Some enterprises in the community are very good, including some food manufacturers or hotels. They succeed in giving the food to the needy through the co-operation with voluntary organizations. We are willing to introduce the specific arrangement of these schemes to enterprises,

including supermarkets, which have not yet participated in any scheme, so as to promote the work in this regard.

Of course, the donors and the receivers must negotiate direct. The Government, particularly my department, is willing to liaise between them, hoping that the successful modes of operation will be introduced into future schemes of a more extensive and intensive scale. We have clearly conveyed this message to all supermarket enterprises we have met. And, we hope that they will take positive follow-up actions.

MR FRED LI (in Cantonese): *President, regarding the advertisement of Parknshop mentioned by Mr WONG Sing-chi earlier, I have read its full contents. At present, Parknshop supermarkets launch price cuts at 7 pm every evening to sell food which will soon reach the expiry date. Supermarkets dump food which will turn bad soon after 7 pm. This practice is indeed a grey area. Will the Secretary ask supermarkets not to sell some of the food? It is because if food remains unsold after 7 pm, it will again be disposed of. We should strive for a balance in this respect by keeping some of the food for donation because many people in poverty are in need of such food. Though the Secretary is not the Secretary for Labour and Welfare, will he invite another Bureau to participate in and promote the programmes? Otherwise, despite the big sale offer launched at 7 pm every evening by supermarkets, food unsold will be disposed of all the same and wastage will be caused anyway.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): We are rightly working on the proposal put forth by the Member. Strictly speaking, supermarkets are commercial organizations. We have no legal authority to influence their waste disposal arrangement. However, we notice that despite the good management of the supply chain or the launching of price cut to promote sales, it is possible that there will be surplus food. I do not hope that enterprises will disposal of food or allow the needy to take the food arbitrarily. It is more desirable that arrangement can be made via intermediary organizations — as I mentioned in the reply earlier, some voluntary organizations engaging in this area of work are subsidized by the Government while others are self-financed. With these organizations acting as the liaison between both sides, the purposes of environmental protection as well as mutual assistance in society will then be

achieved. Hence, after initial contact, we hope that this will become a new channel.

We have also sought advice from colleagues in the welfare sector. At present, organizations participating in food bank schemes have no direct contact with supermarkets. There is plenty of room for making arrangement. And, this also explains why we set out certain approaches in the reply that may address the worries of donors and receivers. We will continue to handle the issue in this direction.

PRESIDENT (in Cantonese): Fifth question.

Economic Measures to be Taken Amidst European Debt Crisis

5. **DR LAM TAI-FAI** (in Cantonese): *The European debt crisis has been deteriorating continuously and countries such as Greece, Ireland, Portugal and Spain, and so on, need to seek assistance one after another from the European Union or international organizations. Some experts are worried that if the political and economic situation in Europe keeps deteriorating, a domino effect might be triggered off, sending tremendous waves to global finance and economy. Some members of the trade have relayed to me that the European debt crisis will bring about an impact far more serious than that of the outburst of the financial tsunami in 2008, and Hong Kong being a small and highly open economy definitely cannot be spared of the crisis. In this connection, will the Government inform this Council:*

(a) whether the Government has learnt from past financial crises and made preparations, both psychologically and strategically, and expeditiously set up a financial expert team to conduct in-depth studies on various corresponding plans in advance so as to safeguard Hong Kong's financial market which is prone to attack from international speculators in a situation of fear and instability; if it has, of the details; if not, the reasons for that;

(b) whether it has assessed if the European debt crisis will create a more serious impact on Hong Kong than the financial tsunami in 2008; if it has, of a specific account of the possible impact on Hong

Kong's financial market, commercial and industrial sectors, real estate sector, employment, inflation, fiscal reserve and exchange rates, and so on; if not, the reasons for that; and

(c) whether it has discussed with the Central Government any corresponding plan, and whether it anticipates that the State will immediately roll out some measures to support Hong Kong's economy in case Hong Kong suffers a serious economic impact; if so, of the details; if not, the reasons for that?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the still-fluid political situation in Greece after its parliament re-election and surging interest rates on the sovereign debts of Spain and Italy are causes for concern. Given the uncertainties in the global economic outlook, international capital flows may quickly reverse their courses.

The European debt crisis and the financial tsunami are different in nature. The financial tsunami was basically a problem of financial institutions, and the situation stabilized after central banks enhanced liquidity provision and governments injected capital into financial institutions and put in place deposit guarantees. On the contrary, the European debt crisis is a sovereign debt problem turning into a political issue as various governments in the same currency area are involved. To resolve the crisis, more time is therefore needed for deliberation and co-ordination. The ultimate impact of the crisis depends very much on whether Eurozone countries can come up with an effective solution. Hence, it is difficult to assess at this stage if the European debt crisis will bring about a more serious impact on Hong Kong compared with that stemming from the financial tsunami.

Notwithstanding the volatility of the global financial markets, local financial institutions in general remain resilient. Operations in the interbank market, securities market and insurance sector continue to be orderly. We will continue to monitor the situation and enhance our risk management measures.

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

(a) We have been reviewing the existing regulatory regime and relevant rules and regulations from time to time in response to the changing

environment and market development needs. For example, we have implemented a new short position reporting regime since 18 June this year. Under the regime, those who hold reportable short positions in specified shares are required to report to the Securities and Futures Commission (SFC). At the same time, regulators have put in place stringent risk management requirements and conducted stress tests. Where necessary, regulators will introduce additional capital and liquidity requirements, implement countercyclical measures, and require financial institutions to increase capital, make appropriate contingency plans and adopt improvement measures.

On banking sector, the Hong Kong Monetary Authority (HKMA) has been requiring banks to implement prudent management on various risk factors. Since 2009, the HKMA has introduced four rounds of countercyclical prudential measures to strengthen the risk management of mortgage lending business. Last year, the HKMA also repeatedly asked banks to exercise stringent control over the potential risks posed by rapid credit growth, and required banks to raise the level of regulatory reserves. These efforts have helped enhance the resilience of the banking system against possible financial crises.

On securities and futures markets, the SFC has in place contingency plans for various emergency scenarios which might affect the normal operations of our securities and futures markets. In view of the volatility in the international financial markets of late, the SFC has strengthened the monitoring of trading activities, and advised brokers to remain vigilant to the potential risks brought about by market fluctuations and tighten their risk management. Stress tests on liquid capital and random on-site examinations are also frequently conducted to keep brokers in check. The SFC will closely monitor brokers with higher risk profiles and require them to take improvement measures.

Local financial regulators have also been regularly exchanging information and views on various aspects on the sector and maintaining close contact with overseas regulators to keep track of

the latest conditions of foreign financial institutions. The Financial Secretary and the Financial Services and the Treasury Bureau are also monitoring the market through relevant cross-regulator co-ordination platforms. In addition, regular market contingency exercises are conducted by the Government, financial regulators and the Hong Kong Exchanges and Clearing Limited, with a view to testing and ensuring that all parties are able to tackle market contingencies and enhancing their communication and co-operation in handling various emergency scenarios.

(b) In respect of the European debt crisis, the risk exposures of local banks to Greece accounted for less than 0.01% of the total assets of the banking sector, while the exposures to Ireland, Italy, Portugal and Spain accounted for only 0.45%. The shares of European banks (excluding British banks) in the local banking sector's total lending to and deposits from customers are 7.5% and 4.7% respectively. To date, the European debt crisis has not caused any credit crunch in the local loan market. The Hong Kong dollar exchange rate and interest rates have remained stable.

Due to the European debt crisis, some investment products are indeed facing counterparty risk to European market ratings and financial institutions. In view of this, the SFC has introduced a number of measures, including monitoring authorized products' risk exposure to major international financial institutions, requiring domestic synthetic exchange-traded funds to top-up the collateral level to achieve at least 100% collateralization, and strengthening its communication with major product issuers, arrangers and fund management companies.

Regarding commercial and industrial sectors, the European Union, being the largest economy in the world, is an important export market for Hong Kong and accounts for around 11% and 19% of our total exports of goods and services respectively. In fact, our export volume to Europe dipped by 9% year-on-year in the first four months of this year, while new export orders weakened again recently. Therefore, Hong Kong's near-term export outlook remains bleak. Fortunately, other domestic-oriented sectors in

Hong Kong have held up relatively well. This, coupled with the continued growth in the tourism sector, should render some buffering effect to the performance of our economy.

In respect of such livelihood issues as employment and inflation, unemployment rate has remained low at 3.2% amid the sturdy domestic demand. However, given the difficult external environment, some worsening in the local employment situation may be seen in the coming months. The Government will closely monitor the related developments. Regarding prices, local inflation is gradually easing off. Nevertheless, as international food and commodity prices have been rather volatile, we will keep an eye on the upside risks to inflation.

As for the real estate sector, the property market is now caught between two opposing forces, namely a sluggish external economy and exceptionally low interest rates, which together may lead to substantial price fluctuations. The Government has all along been vigilant on the development in the property market. A number of measures have been introduced since early 2010 and have achieved some results. The Government will keep a close eye on the market, and where necessary adjust the strength of the measures in response to the economic conditions to ensure healthy and stable development in the property market.

Given the bleak economic prospects in Europe and the United States, the Financial Secretary introduced in his Budget this February measures worth nearly $80 billion to better support our people and enterprises. These measures, together with other expenditure, would help stimulate the economy by around 1.5 percentage points in 2012. With our sound fiscal position, we will continue our efforts to ensure the structural integrity of public finances and maintain adequate fiscal reserves for future challenges.

In short, the Government will stay vigilant against the uncertainties in external environment and get prepared to tide over any adverse external shocks whenever necessary.

(c) Facing instabilities in the global backdrop, Hong Kong, as an open economy, will continue to leverage the advantage of having the Mainland as our hinterland and foster our economic ties with emerging markets to meet possible external challenges.

Last August, Vice-Premier LI Keqiang announced a series of financial, economic and trade measures during his visit to Hong Kong. These measures, coupled with the liberalization and co-operation measures in these areas rolled out under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), will help promote sustainable development and co-operation in the financial, economic and trade sectors in the Mainland and Hong Kong, thereby enabling both places to cope with the gyrations in the external economic environment with concerted effort.

To better prepare Hong Kong for future challenges and opportunities, the relevant bureaux and departments of the Government will capitalize on the positive prospects brought about by the National 12th Five-Year Plan. They will endeavour to assist our service industries in tapping the Mainland market and help businesses of the two places to diversify their portfolio by expanding CEPA and opening up new areas of co-operation through discussions with the Mainland authorities, and putting into implementation the various measures under CEPA.

DR LAM TAI-FAI (in Cantonese): *President, I believe you would agree that prevention is better than cure, which is far better than hugging Buddha's feet in times of trouble, because opportunities will only be reserved for those who are prepared. In the wake of the financial tsunami in 2008, the Government established the Task Force on Economic Challenges consisted of political and commercial elites and academics. Despite criticism on the Task Force's belated awareness, taking belated actions is better than not taking actions at all. We are all aware of the deteriorating European debt crisis, and as the Secretary has just said, the crisis and the situation are getting more political. We can imagine that this crisis will certainly deal a great blow to the economy. I thus hold that the Government must learn from previous experience and be prepared for future challenges.*

President, in part (a) of my main question, I asked the Government whether it would set up a financial expert team to conduct studies on corresponding plans so as to guard against attack from international speculators. Despite his detailed reply lasted over 10 minutes today, the Secretary has not focused on part (a) of my oral question squarely in answering the question. He has only stated the routine work of the Government and the purviews of the HKMA and SFC.

Hence, President, may I ask the Secretary through you to focus on my question and answer it squarely, that is, whether the Government will set up a financial expert team or committee to respond to this potential financial turmoil and minimize its impact on Hong Kong? In fact, Taiwan has already set up a Global Economic Prospects Task Force to deal with the European debt crisis.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Regarding Member's question on how to respond to the global financial environment so as to guard against attack from speculators, the Government and regulators have remained vigilant on this subject. As far as the work under our purview is concerned, we have been maintaining close contact with the sectors. Actually, we have to regularly monitor trading activities of fund managers and be on the lookout for speculative activities on the market. As part of our routine monitoring efforts, we keep close track of investment and capital movements on the market.

Many teams and committees under the Government and different regulators have assisted us in carrying out such work. However, I must stress that in the past few financial storms, including the more recent one in 2008, the internal co-ordination within the Government, our capability in monitoring the global market and maintaining close contact with foreign regulators have evidently played a proactive part in counteracting the financial problems. Hence, we hold that under the present system, we must remain vigilant, keep a close eye on the market and maintain our ongoing monitoring efforts. We will continue to proceed in this direction.

PRESIDENT (in Cantonese): Dr LAM, has your supplementary question not been answered?

DR LAM TAI-FAI (in Cantonese): *May I ask, in view of the present situation, whether the Government plans to set up a financial expert team to deal with this potential financial turmoil?*

PRESIDENT (in Cantonese): Secretary, can you clarify this point?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): As I have stated in my reply just now, on the fronts of the Government and regulators, we have many different teams and channels to obtain information from the sectors, thus enabling us to remain vigilant and maintain the strength of our market monitoring efforts. I believe, to date, this mechanism has been working well.

MR CHAN KAM-LAM (in Cantonese): *President, as stated in part (a) of the Secretary's main reply, the Government has reviewed the existing rules and regulations and enhanced the regulatory regime from time to time, so as to strengthen our financial system in counteracting financial crises. In my opinion, the direction is correct, but the problem is the Government's present practice is still unable to get rid of the "small government" mindset.*

The Chief Executive-elect said that we needed an appropriately proactive government. Past experience shows that financial crises are often due to poor market quality and security. May I ask the Secretary, under the present situation, whether the Government will, besides strengthening monitoring efforts, consider reviewing complex financial products with high risk and high return in the market, so as to enhance the transparency, security and quality of the market, thereby ensuring that investors can be accorded better protection in the market of Hong Kong?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I thank Member for the question. I have two points. First, our routine work includes monitoring the fluctuations of the financial market and the operation of the market, so as to rule out any chance of systemic risks. Regarding high-risk financial products such as derivatives and callable bull/bear contracts, we will be on the lookout for any systemic risks generated in the operation of these markets.

Regarding other financial products, as I have stated in the main reply, some products issued by certain financial institutions may be subjected to counterparty risks due to the European debt crisis. In this regard, the SFC has strengthened its monitoring efforts, such as by appropriately topping-up the collateral level of these products.

Just now, Member has raised another question which is related to investors. He asked how we monitored those high-risk and high-return products. I believe Member is aware that in the wake of the Lehman Brothers-related minibond incident, financial regulators have taken a number of measures to tighten the sale of high-risk and high-return products at the retail level. Progress has been seen from the vetting and approval of sale documents to monitoring the marketing activities. We will proceed in this direction and keep a close eye on the market. We will duly follow up any such new product in the market with this stringent monitoring approach.

MR CHIM PUI-CHUNG (in Cantonese): *President, the European debt crisis has already surfaced for a year or two, but the Government has only made empty remarks with no deeds. May I ask the Government whether it has any procedures and specific measures in place to ease public concern? In case the European debt crisis does affect Hong Kong in future, does the Government have any contingency plans and is it capable to deal with it?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I thank Member for the question. Certainly, the European debt crisis has developed for some time and it has turned white-hot since last summer holiday. Members are all concerned about this issue. In the Budget this year,

that is, in the 2012-2013 Budget, the Financial Secretary has formulated a series of measures to prepare for the crisis as well as to deal with the likely slackening economy.

At present, the biggest immediate effect of the European debt crisis is the negative impact on our export volume due to the slackening European market. Hence, the Financial Secretary has proposed in the Budget a series of measures worth a total of almost $80 billion, equivalent to 4.2% of our GDP, in a bid to boost economic growth. These measures, together with other expenditure, would help stimulate the economy by 1.5 percentage points in 2012. That is to say, when the Budget was announced this February, we have already adopted measures to prepare for the problems likely to happen in the year. Moreover, in respect of the small and medium enterprises (SMEs) financing, the Financial Secretary has enhanced the loan guarantee for SMEs, so as to give more "bullets" for them to deal with any possible capital issues.

We are concerned that any new twist of the European debt crisis may negatively affect our financial institutions. According to the experience obtained from the 2008 financial tsunami, if some financial systems start to crumble, we may need to put in place measures to provide short-term capital. The HKMA will keep a close eye on the developments and will also learn from the effective monitoring experience in 2008 to prepare for future challenges.

MR FRED LI (in Cantonese): *Cyprus, though a relatively small country, has just been added to the list of countries plagued by the European debt crisis. In a recent conversation with a member of the senior management of a local airline, I was told that the volume of Mainland air cargoes had dropped dramatically and would unlikely be recovered in the near term. In fact, this has indicated an obvious receding economy. I have the following question for the Secretary, a question that we as well as Dr LAM Tai-fai are very concerned about. That is, with the European debt crisis deteriorating continuously, have the authorities specifically re-assessed the difficulties faced by SMEs and are there any corresponding measures?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I thank Member for the question. In fact, we constantly make such assessment. The assessment conclusion is that the first to bear the brunt is the

export trade, and some Hong Kong manufacturers will be affected. Hence, in the Budget this February, the Government has launched an enhanced SME Financing Guarantee Scheme with a total guarantee commitment of $100 billion as a major measure to help SMEs. These loan schemes have proved effective in the wake of the financial tsunami in 2008 to 2009, benefiting over 20 000 enterprises and that is to say, some 300 000 jobs have been preserved. Certainly, the situation now is not as bad as the situation then, but we need to prepare for the worst. We thus have launched the SME Financing Guarantee Scheme, in a bid to assist SMEs in facing potential difficulties.

On external situation, we are also concerned that the external economies have been dragged down by the European debt crisis. In order to alleviate the burden exerted on our economy, we will introduce short-term stimulus to boost domestic spending. Hence, as far as boosting spending is concerned, the Financial Secretary has introduced measures worth $80 billion to stimulate our local domestic economy so as to render a buffering effect against the external economies.

PRESIDENT (in Cantonese): We have spent more than 22 minutes on this question. Last question seeking an oral reply.

Dispensers in Hospital Authority who are Required to Perform Duties of Pharmacists

6. **DR PAN PEY-CHYOU** (in Cantonese): *President, I have received a complaint from the Hong Kong Professional Pharmaceutical Employees Association (HKPPEA) that the Hospital Authority (HA) has, since 2003, made applications to the Department of Health (DH) on its own volition for some dispensers to be appointed as "approved persons", without informing such dispensers nor obtaining their consent or authorization, and asked them to undertake and perform the duties of pharmacists in-charge, which should be performed by registered pharmacists. HKPPEA has pointed out that those dispensers who hold the status of "approved persons" are not registered pharmacists and HKPPEA is worried that drug safety may be affected. In this connection, will the Government inform this Council if it knows:*

(a) the numbers of additional pharmacists and dispensers employed by the HA in each of the past nine years to cope with the manpower needs of its dispensaries and the average waiting time for patients of the general out-patient clinics (GOPCs) and specialist out-patient clinics (SOPCs) of the various clusters of the HA to collect medicine; whether the HA had ever withheld the recruitment of pharmacists because there was a sufficient number of dispensers holding the status of "approved persons" since the HA has assigned such dispensers to perform the duties of pharmacists in-charge in 2003; whether the HA had consulted the dispensers and their staff associations before implementing the "approved person" system in 2003; whether the system had been reviewed and enhanced in the past nine years; if not, the reasons for that;

(b) whether the HA had informed the dispensers concerned in advance before making applications for them to be appointed as "approved persons"; whether it had given copies of the appointment and other related letters to such dispensers for their retention after application; how such appointments and recognition of qualifications are of use to the experience and qualifications of the dispensers; whether the HA had, at the time of making applications for appointment of these dispensers, provided them with additional training and opportunities for further studies, and improved their remuneration packages to enable them to cope with the additional workload and duties; and

(c) given that the employees in the trade and members of the public have strong reservations about assigning dispensers who have been appointed as "approved persons" to perform the duties of registered pharmacists, whether the HA will immediately put the system on hold (including immediately re-assigning registered pharmacists who meet the qualification requirements to take up the posts of pharmacist in-charge currently taken up by "approved persons") and expeditiously employ additional staff for both grades so as to ease the pressure of the workload in the dispensaries and to shorten the waiting time for patients to collect medicine; whether the HA will also review the duties, scope of work and promotion ladder of the different grades of staff in the dispensaries so as to enhance the

procedures and efficiency in dispensing medicine in the dispensaries under the HA and reduce medicine incidents?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, under the Dangerous Drugs Ordinance (Cap. 134) and the Pharmacy and Poisons Regulations (Cap. 138A), pharmacies of hospitals and out-patient clinics are required to have a registered pharmacist or a person approved by the Director of Health to possess and supply dangerous drugs and to supervise the dispensing of poisons. Before the HA took over 59 GOPCs from the DH in July 2003, senior dispensers and dispensers had all along been in charge of the GOPC pharmacies and were responsible for possessing and supplying dangerous drugs and supervising the dispensing of poisons. This is referred to as the "approved person" arrangement. After taking over the GOPCs, the HA has continued to adopt the "approved person" arrangement and recruited 45 additional pharmacists to manage the operation of GOPC pharmacies.

At present, the HA applies to the Director of Health on a regular basis for extending the "approved person" status of some senior dispensers and dispensers working in the GOPCs, so that they can continue to perform dispensing-related duties in accordance with the aforesaid Ordinance and Regulations. The HA has already, for each of the GOPCs, deployed pharmacists to be in charge of the pharmacies and be responsible for the management of the daily operation of the GOPC pharmacies. The "approved persons" are not required to be in charge of the GOPC pharmacies but they have to perform the duties of "approved persons" (including possession and supply of dangerous drugs as well as supervising the dispensing of poisons) in the absence of on-site pharmacists and when there is a service need. The "approved person" arrangement is an established practice adopted from the DH and has been operating effectively. The extension of the "approved person" status with the Director of Health's written approval also complies with the law. In fact, the duties of "approved persons" are part of the daily and professional duties of the dispenser grade staff. The work arrangement is consistent with that when they worked in the GOPC pharmacies under DH's management in the past.

At present, all dispensers trained by the Hong Kong Institute of Vocational Education have obtained the Higher Diploma in Pharmaceutical Technology and

received vocational training in uses of drugs and drug dispensing practice. After they joined the HA, dispensers will receive a variety of continuous professional development training every year, covering pharmacy practice, drug knowledge as well as personal and career development, and so on, to cope with service needs. Therefore, dispenser grade staff of the HA have the professional qualification and knowledge and are competent to perform dispensing-related duties in the GOPC pharmacies. The HA will continue to uphold the principle of appointment by merit and arrange both pharmacists and dispensers to work together in the GOPC pharmacies so as to meet service needs.

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

(a) The number of pharmacists and dispensers recruited by the HA every year varies according to service development and operational needs. In each of the past nine years, the HA took on additional pharmacists (maximum 53 in one year) and additional dispensers (maximum 32 in one year). Detailed figures are at Table 1 of the Annex. In recent years, the average waiting time for drug dispensing services for patients attending the HA's SOPCs has been maintained at about 40 minutes. Detailed figures are at Table 2 of the Annex.

After taking over the GOPCs, the HA has continued the "approved person" arrangement in the GOPC pharmacies for operational reasons. As a matter of fact, the duties of "approved persons" are within the scope of daily duties of the dispenser grade staff, and the number of "approved persons" has been gradually decreasing from 93 in 2003 to 34 in July 2012. The 34 "approved persons" whose status have been extended are all senior dispensers who are experienced and professionally competent to perform dispensing-related duties. On the other hand, since 2011-12, the HA has been recruiting and deploying over 20 pharmacists to work at the GOPCs to strengthen the overall manpower support and enhance the overall efficiency of GOPC pharmacy services. The HA has been communicating closely with the concerned staff and the dispenser staff associations on the need to extend the "approved person" status of some of the dispenser grade staff.

(b) Since 2009, the HA has issued written notices to the concerned staff on the Director of Health's approval for extending their "approved person" status. The "approved persons" with their status extended in the past were all senior dispensers and experienced dispensers. As mentioned above, the HA provides a variety of continuous professional development training, covering pharmacy practice, drug knowledge as well as personal and career development, and so on, for pharmacy staff every year (including dispenser grade staff working in both hospitals and out-patient clinics) so as to meet service needs.

(c) The HA understands the concerns of some dispensers about their roles as "approved persons". However, to ensure that the operation of the GOPC pharmacies will not be affected, the HA assesses that there is still a need to maintain the "approved person" arrangement for senior dispensers in the near future.

In recent years, the HA has been recruiting more pharmacist and dispenser grade staff to shorten the waiting time and improve workflow in drug dispensing services. The HA will keep in view the service development and operational needs and deploy its manpower flexibly and determine the appropriate staff mix in order to deliver efficient and safe pharmaceutical services in the GOPCs to meet patients' needs.

Annex

Table 1: Additional pharmacists and dispensers employed by the HA from 2003-2004 to 2011-2012

Year	*Manpower growth as at 31 March each year*	
	Number of pharmacists	*Number of dispensers*
2003-2004	52	0
2004-2005	17	0
2005-2006	16	6
2006-2007	6	5
2007-2008	13	24

Year	*Manpower growth as at 31 March each year*	
	Number of pharmacists	*Number of dispensers*
2008-2009	18	32
2009-2010	27	30
2010-2011	11	22
2011-2012	53	26

Table 2: Average waiting time for the HA's drug dispensing services in SOPCs from 2004-2005 to 2011-2012

Year	*Average waiting time for the HA's drug dispensing services in SOPCs*
2004-2005	37.6 mins
2005-2006	28.4 mins
2006-2007	27.4 mins
2007-2008	31.4 mins
2008-2009	32.6 mins
2009-2010	41.2 mins
2010-2011	41.7 mins
2011-2012	41.3 mins

Note 1: The dispensing system and workflow of the GOPC pharmacies are different from those of the SOPC pharmacies. The HA is unable to provide the overall average waiting time for drug dispensing services in the GOPCs.

Note 2: The HA does not maintain information on the average waiting time for drug dispensing services in the SOPCs in 2003-2004.

DR PAN PEY-CHYOU (in Cantonese): *President, I just cannot help expressing my strong dissatisfaction, although this is the last time the Secretary takes part in the oral answers to questions session in the Legislative Council meeting. The reply given by the Secretary is both contradictory and irrelevant, which has aroused strong dissatisfaction in me.*

Regretfully, I can raise only one supplementary question. I have put to the Secretary a number of questions in part (b) of my main question. First, whether the HA had obtained the consent of the dispensers concerned in advance before appointing them to be "approved persons"; second, whether it had

provided information on appointments, namely the duties and scope of authority of the "approved persons" to such dispensers after application; third, whether the remuneration packages and promotion prospects for the dispensers holding the status of "approved persons" will be enhanced. The Secretary did not give any reply to such questions. I have no idea how I should present my supplementary question. I hope the Secretary can elucidate on part (b) of my main question.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, according to the information available, such "approved persons" had all along been performing similar duties before 2003. The HA has just extended their established duties after taking over the clinics concerned. The HA's applying to the Director of Health on a yearly basis for extension approval is also no different from the past practice. Therefore, the staff will not be particularly affected in my opinion.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

DR PAN PEY-CHYOU (in Cantonese): *Still, the Secretary has not yet answered my question. Their holding the status of "approved persons" before 2003 does not necessarily mean that they are willing to continue holding such a status in future. So I ask whether the HA has obtained the consent of these dispensers before making applications for extending their "approved person" status.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have no information that shows if each of the staff concerned has undergone this consultation procedure. Yet, given that those professional staff are currently performing such duties and their "approved person" status is extended every year, I believe that the HA has treated them with a correct approach.

MR WONG YUNG-KAN (in Cantonese): *President, I find it rather odd after learning the average waiting time for drug dispensing services shown in the Annex. The shortest average waiting time for drug dispensing services during the period between 2004 and 2009 was 27.4 minutes, whereas that of the period between 2009 and 2012 was 41.3 minutes. I regularly have body check-up or seek medical consultation several times every year. I wonder why the waiting time for drug dispensing services has been lengthened suddenly.*

At present, there are great grievances among members of the public because a patient having a consultation appointment with an SOPC at half past two just cannot leave the clinic until some time past five. Is there any measure that the Government can take to shorten the waiting time so as to save patients from spending as long as 41 minutes on waiting for drug dispensing services? Is it something to do with the arrangement of "approved persons"? Is it necessary for the Government to conduct review?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): The HA reviews from time to time its work efficiency as well as the degree of patients' recognition for its services. To my knowledge, the situation in recent years is that: first, the number of patients receiving medical care from the HA is great; second, drugs handled by the HA are of a greater variety and a more complicated nature, leading to more vetting procedures to ensure drug safety. As the variety of drug has increased, I believe they have to spend more time on drug dispensing.

However, under the established mechanism of the HA, a patient may, depending on the priority order assigned to him for dispensing services, leave the clinic first and return later to collect medicine. Hence, a patient needs not spend long time in the clinic waiting for his turn to collect medicine. If the waiting time is expected to take some 30 or 40 minutes, the patient can leave for half an hour and return later to collect medicine. Then, this will not cost patients too much time.

Of course, we do hope that efficiency can keep on improving. Currently, we are studying ways other than electronization to enhance the efficiency of drug dispensing workflow. Since drugs have strong impacts on the safety of patients, it is necessary for the dispenser to explain to the patient the administration of drugs each time upon dispensing drugs. This takes some time, of course.

Thus, the waiting time of 30 or 40 minutes is acceptable, although it can still be shortened.

PRESIDENT (in Cantonese): Mr WONG, has your supplementary question not been answered?

MR WONG YUNG-KAN (in Cantonese): *I am asking what takes the patients to spend 10-odd minutes more on waiting before they can collect medicine. Is it a problem of manpower or knowledge? But the Secretary said in his reply that it was due to the increased variety of drugs. I am aware of this. It is because whenever my blood pressure slightly goes up during the consultation, I will be prescribed an additional type of drug ……*

PRESIDENT (in Cantonese): Mr WONG, please do not respond to the Secretary's reply.

MR WONG YUNG-KAN (in Cantonese): *I hope the Secretary will reply again to elucidate ……*

PRESIDENT (in Cantonese): In your opinion, which part has not been answered by the Secretary?

MR WONG YUNG-KAN (in Cantonese): *Primarily, the Secretary has not given any answer to whether the Government has any plans to expeditiously provide training and to speed up the drug dispensing workflow.*

PRESIDENT (in Cantonese): The Secretary has already given a reply. Let us see if the Secretary has anything to add.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I believe I have answered Member's supplementary question. Particularly, I have explained the complexity of administering drugs, the need to enhance safety and the need for the dispenser to provide a detailed explanation to patients every time about the administration of drugs, their side-effects safety, and so on.

MR IP WAI-MING (in Cantonese): *President, although this is the last time the Secretary attends the Legislative Council meeting to give replies to Members' questions, just as Dr PAN has remarked, his reply is really irrelevant.*

In fact, the HKPPEA has long been complaining about this issue and taking up the matter with the HA and the DH. Primarily, we wish that the Secretary will elucidate this: since dispensers do not possess pharmacists' qualifications, but they are regarded as "approved persons", will they be held liable, like pharmacists, for any risk occurred because of their "approved person" status? And yet, no corresponding enhancement has been introduced to their remuneration package.

In addition, after listening to the Secretary's reply just now, I find that no channel is available now for the dispensers to reject holding the status of "approved persons". I wish that the Secretary will respond to this supplementary question.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, Members can raise questions on the remuneration package for dispensers if that is the issue they wish to pinpoint. They should not put this question to me in such an indirect way from this perspective. Hence, I find it necessary to provide a clear explanation. The arrangement is an established practice long adopted by both the DH and the HA and has been operating effectively. Actually, these professional staff are well-trained and competent. As they are comparable to pharmacists in terms of drug handling, we think the arrangement is worth keeping.

Nevertheless, as I have just said, we will require the HA to recruit additional pharmacists in the GOPCs to cope with the changes in technology, the introduction of new drugs and other issues related to drug knowledge. In fact, a few dozens additional pharmacists were recruited in the past. We opine that the

arrangement should be kept, but if the staff are dissatisfied with it, in the long run, they should have detailed discussions with the HA. I know that a legal proceeding involving staff associations is still not yet fully settled now. I wish to appeal to the staff concerned, in particular members of your association, to settle the dispute with the HA through mediation.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR IP WAI-MING (in Cantonese): *I asked the Secretary just now ……*

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

MR IP WAI-MING (in Cantonese*): …… will the dispenser be subject to the same legal liabilities borne by a pharmacist for any risk occurred? This is the supplementary question that I raised just now, but the Secretary has not answered.*

PRESIDENT (in Cantonese): Mr IP, did you ask whether the dispenser will be subject to the same legal liabilities borne by a pharmacist? You have mentioned so many issues that I am not quite sure what your supplementary question is. Secretary, the Member's question concerns the issue of legal liabilities.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have something to add. Certainly, a professional staff member is subject to legal liabilities if something wrong happens when he is performing his duties. But the HA has taken out insurance for all its staff in this regard.

DR JOSEPH LEE (in Cantonese): *President, the Secretary has pointed out in his main reply that the "approved person" arrangement has been operating effectively in the GOPCs for years. And, it has been adopted by the DH and subsequently the HA after its taking over the GOPCs.*

I wish to put to the Secretary: given that the arrangement is effective and there are both dispensaries and SOPC dispensaries in HA hospitals, why has the Secretary not considered introducing the arrangement to these two types of dispensaries if it is effective and can help shorten the waiting time?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, some changes in the past are involved here. The HA already recruited additional pharmacists years earlier. Moreover, unlike their counterparts in the GOPCs who work regular hours every day, dispensers working in HA hospitals have to work night shifts according to rosters. Therefore, those HA staff transferred from the DH should be entitled to the same remuneration package if they are willing to work in hospitals.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Handling of Food Waste

7. **MR WONG KWOK-KIN** (in Chinese): *President, it has been reported that an environmental group conducted an investigation into the problem of supermarkets trashing food, and the findings have revealed that major chain supermarkets in Hong Kong dispose of nearly 90 tonnes of food per day, and some supermarkets even purposely made the trashed food inedible to discourage scavengers from picking food from the throwaways. In this connection, will the Government inform this Council:*

(a) of the latest construction progress of the two organic waste treatment facilities (OWTF) in Siu Ho Wan of North Lantau and in Shaling of the North District; whether they can be commissioned in

2016-2017 as scheduled; of the latest details of the Government's plan to construct other food waste treatment facilities;

(b) of the effectiveness of the Food Waste Recycling Partnership Scheme since its introduction; the number of participating organizations so far; the amount of food waste successfully processed; whether the authorities will plan to expand the Scheme to allow participation of other organizations or units; and

(c) whether the authorities will consider introducing measures (for example, banning food waste in landfill or recovering the costs for processing food scraps and food waste) to encourage shops and eateries to donate edible leftover or food waste to the food banks, with a view to helping the grassroots in need; if they will, of the details; if not, the reasons for that?

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, our reply to the question raised by Mr WONG is as follows:

(a) Biological treatment technology such as anaerobic digestion and composting, will be adopted for the OWTF to convert source-separated food waste from the commercial and industrial (C&I) sectors to renewable resources such as biogas and compost. The first phase of OWTF will be developed in Siu Ho Wan of North Lantau to treat about 200 tonnes of food waste per day. As the result of the tender had substantially exceeded the original estimates, we are arranging a re-tender according to the established mechanism, with a view to commissioning the facility in 2015. We also commenced a study in late 2011 on the development of the second phase of OWTF in Shaling of the North District to treat about 300 tonnes of food waste each day. We plan to complete the environmental impact assessment for the project in mid-2013, and if progressing smoothly, the facility is expected to be completed in 2017. By then, the two phases of OWTF will be able to treat food waste from the C&I sectors at a total capacity of about 500 tonnes per day.

In addition, the Government started the search for suitable sites throughout Hong Kong in 2011 with a view to developing more regional OWTFs. Subject to the results of the site search exercise, we will undertake further studies to assess the feasibility and detailed requirements of developing more OWTFs in Hong Kong.

(b) It has been nearly two years since the launch of the Food Waste Recycling Partnership Scheme in June 2010. The results are encouraging. Up to mid-2012, the Environmental Protection Department (EPD) has helped train the management and front-line staff of more than 60 organizations on food waste reduction management practices. The EPD has also drawn up guidelines on the management and source separation of food waste. Some 920 tonnes of food waste have so far been collected under the Scheme for recycling at EPD's pilot composting plant in Kowloon Bay. About 160 tonnes of compost products have been produced for use at local farms and schools. The EPD will keep the Scheme going and invite more organizations and institutions to join in.

(c) Through the Social Welfare Department, food banks, food donation schemes, and so on, the Government encourages businesses to donate edible leftovers to help the needy. As regards the suggestion to recover the costs for processing food waste, the Government is analysing the results of the public consultation on the municipal solid waste charging scheme and will draw up a proposal on the way forward.

Environmentally Friendly Linkage System for Kowloon East

8. **MR ALAN LEONG** (in Chinese): *President, regarding the environmentally friendly linkage system (EFLS) in the Energizing Kowloon East initiative, will the Government inform this Council:*

(a) given that apart from the proposed monorail, the authorities have included other environmentally friendly modes of transport in their scope of studies, of the details of these modes of transport in terms of costs, transport efficiency, operating and maintenance expenses,

economic internal rate of return, future development flexibility and accessibility to the various districts within Kowloon East;

(b) given that the relevant feasibility study does not recommend the extension of EFLS to some old developed districts in Kowloon East, including To Kwa Wan, Kowloon City and San Po Kong, and one of the reasons is that while the anticipated patronage for the said branch extensions is relatively low, the additional construction costs incurred will be very high, whether the authorities, having regard to this problem, have studied other environmentally friendly modes of transport which may be available for use by the residents of these old districts and are also economically efficient; if so, of the details; if not, the reasons for that;

(c) whether it knows which other places have monorail systems, and how these monorail systems compare with one another in terms of costs, efficiency, operating and maintenance expenses, economic internal rate of return and development flexibility; and

(d) of the estimated annual operating and maintenance expenses of the proposed monorail system?

SECRETARY FOR DEVELOPMENT (in Chinese): President, in his 2011-2012 Policy Address, the Chief Executive announced that we would adopt a visionary, co-ordinated and integrated approach to transform Kowloon East, comprising the Kai Tak Development (KTD), the former industrial areas of Kwun Tong and Kowloon Bay, into an attractive core business district (CBD) to sustain Hong Kong's economic development. To achieve this goal, the infrastructure works within the district should be well-planned for enhancing connectivity. Befitting Kowloon East CBD's green vision and development strategies, the proposed EFLS as a transport mode with low carbon emission will enhance inter-district and intra-district connectivity of Kowloon East.

In December 2011, we briefed the Panel on Development of the Legislative Council on the Government's new initiative on transforming Kowloon East into a CBD, including a two-stage public consultation exercise to be commenced for soliciting public views on the EFLS proposal. The Stage 1 public consultation

commenced in February 2012 and the Panel on Development was consulted in April 2012. Views collected at the Stage 1 public consultation will be analysed and reported to relevant stakeholders at the Stage 2 public consultation, which will be conducted in end 2012, with a view to arriving at a consensus reflecting the majority of public views on the way forward for the EFLS.

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

(a) The Kai Tak Outline Zoning Plan approved in November 2007 has contained a reserve for an elevated rail-based environmentally friendly transport system as a long term transport mode subject to detailed investigation. In December 2009, we commissioned the consultants to study the feasibility of providing the EFLS in the form of elevated rail line. Apart from the proposed monorail, the EFLS feasibility study has also examined rubber-tyred Automatic People Mover (APM). The passenger capacity, construction cost, operating and maintenance expenses of both monorail and APM are of similar order, though the APM would cause more visual impact and blockage to daylight/ventilation. To tie in with the completion of the cruise terminal and public housing development in 2013, the study has also preliminarily examined the applicability of other road-based green public transport modes for KTD, including the supercapacitor bus, battery-electric bus and hybrid bus. On the other hand, the bus companies are now arranging to conduct pilot schemes on these different types of green buses in order to ascertain their suitability for use in Hong Kong. Road-based green transport vehicles will offer an advantage of lower procurement cost and running cost as well as higher flexibility for route planning, but will occupy road space thus having lower transport efficiency and adding pressure to the already busy road network in districts adjoining KTD. In response to the public suggestions solicited during the Stage 1 public consultation, we will further look into other technical aspects of the road-based green public transport modes such as traffic impact, land use and cost implications. Relevant information will be made available for public consideration during the Stage 2 public consultation.

(b) The study suggests not extending the EFLS to To Kwa Wan, Kowloon City and San Po Kong. The major factors in consideration of penetrating the elevated monorail into the old residential areas are the complicated technical difficulties and constraints of topographical environment, including the noise and visual impacts on the residential areas, concerns about intrusion of privacy of the premises, and so on. To enhance the connectivity between KTD and To Kwa Wan, Kowloon City and San Po Kong, the study suggests extending some of the existing bus routes via Prince Edward East to KTD as well as 14 items of proposed/enhanced footbridges, subways and at-grade pedestrian crossings.

(c) There are quite a number of monorails in use in the overseas cities, for example, Kuala Lumpur in Malaysia (opened in 2003), Las Vegas in the United States (opened in 2004), Moscow in Russia (opened in 2004), Sentosa in Singapore (opened in 2007) and Palm Jumeirah in Dubai (opened in 2009). We do not have information about the capital investment, operating and maintenance expenses and financial performance for the above overseas monorails. Given the differences in topographical environment, social factor and implementation timeframe, it would be unable to compare the construction cost, operating and maintenance expenses and financial performance of the proposed EFLS with the above overseas monorails on a like-with-like basis.

(d) According to the preliminary estimation in the EFLS feasibility study, assuming that the fare structure for the EFLS is similar to that for the Mass Transit Railway and excluding the replacement costs for electrical/mechanical facilities and rolling stock, the revenue could cover the operating and maintenance expenses of the EFLS. As the detailed feasibility study has yet to proceed and there is no local operating data for the monorail, the annual operating and maintenance expenses of the EFLS could only be broadly estimated to be in the range from $18 million to $23 million per km of rail length at 2010 price level. The actual figure will be subject to the final design and the operating situation.

Operation of The Hong Kong Girl Guides Association

9. **MR LEUNG KWOK-HUNG** (in Chinese): *President, I have received complaints respectively from parents, members of women's groups, kindergarten teachers and Unit Guiders pointing out that the Hong Kong Girl Guides Association (the Association), a statutory body under the presidency of the wife of the Chief Executive, appointed a staff member with only secondary education to act as the Executive Director (ED) of the Association after the former ED vacated office in early October 2010, thus breaching the basic academic qualification requirements for heads of statutory bodies in general. In addition, the Association pointed out mistakenly through the media on 16 September 2010 that the sale of raffle tickets (tickets) had been conducted for more than 20 years and the percentage of refund to its units had never been in the region of 50%, but the authorities stated in its reply to my question on 27 October 2010 that "Starting from the sale of the 1 001st ticket (priced at $2 each), a maximum of $1 was refunded to the units per ticket". The two statements are obviously contradictory. The aforesaid complaints even pointed out that in recent years the Association held its annual general meetings (AGMs) by hosting banquets with tens of tables, each priced at $7,000 to $9,000, hence giving an impression of prodigality. In this connection, will the Government inform this Council:*

(a) of the amount of recurrent subvention allocated to the Association in the current financial year;

(b) whether the remuneration of the incumbent ED of the Association is paid from the recurrent subvention allocated to the Association by the Government; if so, of the monthly remuneration of the incumbent ED; if not, whether it knows who pays for the remuneration of the incumbent ED;

(c) whether it knows if the incumbent ED of the Association is a university graduate; if she is, the university from which she graduated and the year of graduation; if not; whether the basic academic qualification requirements for heads of statutory bodies in general have been breached;

(d) whether the Government at present monitors strictly how the Association uses the recurrent subvention; if so, who is responsible

for monitoring; if not, whether monitoring is impossible after the recurrent subvention has been allocated to the Association from public coffers;

(e) whether it knows if the Association will make a public apology for pointing out mistakenly that the percentage of raffle refund to its units had never been in the region of 50%, if the Association will do so, when it will apologize; if not, the reasons for that;

(f) whether it knows if the Association will revert to the practice in 1992 or before by increasing the percentage of raffle refund to 50% starting from the sale of the 1 001st ticket; if the Association will do so, when the relevant arrangement will be made; if not, the reasons for that;

(g) whether the legislation at present allows charitable bodies to host extravagant banquets for their AGMs; if so, of the relevant legislation; whether it has assessed if the Association should use the money spent on banquets in the past on the development of the units of the Girl Guides instead;

(h) whether it knows if the President of the Association has consented to holding AGM of the Association at the Hong Kong Convention and Exhibition Centre (HKCEC);

(i) given that the Association is able to host banquets with tens of tables at HKCEC, whether the Government should immediately reduce the recurrent subvention to the Association so as to use public funds effectively; if it will reduce the subvention, when it will do so; if not, of the reasons for that;

(j) whether the Government will ask the Director of Audit to review the necessity for the Association, which is funded by the Government, to hold AGM by hosting a banquet with tens of tables at HKCEC; if it will, when it will do so; if not, of the reasons for that; and

(k) whether the Government will appoint civil servants as ex-officio members of the Association to monitor the operation of the

Association; if it will, who will be appointed; if not, of the reasons for that?

SECRETARY FOR HOME AFFAIRS (in Chinese): President, the Association is an independent statutory non-governmental organization. Subvention for its youth development activities is provided by the Home Affairs Bureau. My reply to the question raised by Mr LEUNG Kwok-hung is as follows:

(a) The Home Affairs Bureau's subvention to the Association for youth development work and activities is $10.85 million in the 2012-2013 financial year.

(b) According to the Association, the Home Affairs Bureau's subvention accounts for only around 30% of its expenses. The remuneration policy and payment arrangements for its staff are internal matters of the Association. If necessary, Mr LEUNG may make a direct enquiry to the Association for such information.

(c) The appointment of the Association's personnel is an internal matter of the Association. No specific requirements on the academic qualifications of the Association's Chief Executive are set out in the Hong Kong Girl Guides Association Ordinance, the Constitution of the Association or its internal rules.

(d) The Association submits annual reports, audit reports and reports of other purpose-specific grants to the Home Affairs Bureau every year for the purpose of monitoring the use of subventions.

(e) and (f)

The fund-raising activities of the Association are its self-administered affairs. As far as raffle refund is concerned, on 27 October 2010 we made a reply to Mr LEUNG's written question and we have nothing to add.

(g) to (j)

The activities of the Association are its self-administered affairs. According to the Association, AGMs of the Association are regular meetings convened by its Council to report its work and financial situation to all parties concerned. The holding of an annual dinner is its internal decision. As we understand, the expenditure of such an annual dinner is borne by participants of the event and other sponsors, and no daily operational fund of the Association is involved.

(k) According to the Association's Constitution, the Council is responsible for controlling and managing the affairs of the Association, with members comprising representatives from different sectors of society and appointed representatives from other youth organizations. The Assistant Secretary of the Home Affairs Bureau who is responsible for matters concerning subventions for youth uniformed groups is one of the appointed representatives.

Codes of Practice for Veterinary Surgeons

10. **MR CHAN HAK-KAN** (in Chinese): *President, some pet owners have continuously relayed to me that veterinary surgeons practising in Hong Kong vary in standard, and there have been cases of malpractice resulting in death of animals. They have also indicated that even though the Veterinary Surgeons Board of Hong Kong (the Board) handles complaints involving veterinary surgeons, the relevant process is time-consuming and the number of prosecutions instituted has been on the low side, and they request for improvement in this respect. In this connection, will the Government inform this Council:*

(a) whether it knows the number of veterinary surgeons practising in Hong Kong at present, together with the distribution of the places where they obtained their professional qualifications; the number of veterinary surgeons under complaint in the past five years;

(b) whether it knows the total number of complaints involving veterinary surgeons received by the Board in the past five years, together with the number of such cases involving death of animals;

(c) whether it knows among the complaint cases in part (b), of the respective numbers of cases referred to the Preliminary Investigation Committee (PIC) and the Inquiry Committee (IC) for further follow-up actions; the number of such complaint cases substantiated and the penalties imposed on the veterinary surgeons involved;

(d) whether it knows the average time required to handle a complaint case in the past five years; whether new measures will be put in place or additional manpower will be provided to shorten the handling time; and

(e) whether it will consider increasing the number of members of the Board, particularly members of the public who are not engaged in veterinary practices and representatives of animal welfare groups, with a view to enhancing the representativeness and diversity of the Board's composition; if so, of the details; if not, the reasons for that?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Board is a statutory body established under the Veterinary Surgeons Registration Ordinance (Cap. 529) (VSRO). The Board consists of:

(i) a Chairman;

(ii) a person who is a medical practitioner or pharmacist entitled to practise his profession in Hong Kong;

(iii) two persons who represent the interests of users of veterinary services; and

(iv) six persons who are registered veterinary surgeons,

each of whom is appointed by the Secretary for Food and Health.

The Board regulates the practice of veterinary surgeons in Hong Kong. Its functions include:

(i) establishing and maintaining a register of registered veterinary surgeons;

(ii) setting and reviewing the qualification standards for registration and related registration matters;

(iii) advising the Government on registration matters;

(iv) verifying the qualifications of persons who apply for registration;

(v) accepting or rejecting applications for registration and renewal of registration; and

(vi) dealing with disciplinary offences.

According to the Rules of the Veterinary Surgeons Board (Disciplinary Proceedings),

(i) all complaints received should be referred to a PIC (paragraph 4); and

(ii) on receipt of a referral from the PIC following preliminary investigation, the Board shall consider whether or not the complaint should be referred to a disciplinary IC (paragraph 9).

The Board reviews its operation from time to time. In response to the overall increase in the number of complaints over the past few years, the Board has proposed setting up a panel consisting of non-Board members to participate in handling complaints. This will expand the pool of manpower available to take part, by rotation, in the work of PICs and ICs formed by Board members and panel members, thus enabling more meetings to be convened. The Board has also proposed streamlining the procedures to enhance the efficiency in handling complaints. We will conduct consultations on the proposals later on.

My reply to the five parts of the question raised by the Member is as follows:

(a) As at 31 May 2012, there were 643 registered veterinary surgeons in Hong Kong. The places where they obtained their professional

qualifications include Australia (266 persons), Taiwan (148 persons), United Kingdom (97 persons), South Africa (40 persons), New Zealand (20 persons), United States of America (20 persons) and other territories (52 persons). A total of 197 veterinary surgeons were the subject of complaint between 2007 and 2011.

(b) and (c)

Between 2007 and 2011, the Board received 59, 49, 53, 52 and 66 complaints respectively. After receiving a complaint, the PIC will decide on further actions in the light of the information provided by the complainant, the explanations and information submitted by the veterinary surgeon being complained against and relevant evidence collected during investigation. The PIC may decide that:

(i) the complaint should be referred to the Board for inquiry; or

(ii) the complaint should not be referred to the Board for inquiry; or

(iii) the complaint should not be referred to the Board for inquiry but a letter of advice[(1)] should be issued to the veterinary surgeon being complained against.

Of the 279 complaints received by the Board between 2007 and 2011, PICs have completed their work on 233 cases. Of the cases considered, there are 165 cases where the relevant PIC has decided that the complaints should not be referred to the Board for inquiry, and 28 cases where the PIC has decided that the complaints should not be referred to the Board for inquiry but a letter of advice should be issued to the veterinary surgeons being complained against. The number of cases referred by the Board to ICs is 40.

Among these 40 cases, the ICs have concluded action on 23 cases. The veterinary surgeons in 16 cases were found guilty of misconduct or neglect in a professional respect. Of these 16 cases, six involved

(1) Generally speaking, if the veterinary surgeon being complained against does not deny having made a mistake and the Committee considers the mistake to be trivial though there is room for improvement, the Committee would issue a letter of advice to the veterinary surgeon concerned.

deaths of animals. The penalties imposed for the 16 cases are as follows:

Penalties	*Number*
Temporary removal of name from the register of registered veterinary surgeons	2
Reprimand in writing	13
Warning in writing	1
Compulsory participation in continuing development programme	11
Total	27[(2)]

(d) Between 2007 and 2011, excluding cases which are still being processed, it takes, on average, about 16 months to conclude a case after a complaint was received by the Board. As has been mentioned above, in response to the overall increase in the number of complaints over the past few years, the Board has proposed setting up a panel consisting of non-Board members to participate in handling complaints. This will expand the pool of manpower available to take part, by rotation, in the work of PICs and ICs formed by Board members and panel members, thus enabling more meetings to be convened. The Board has also proposed streamlining the procedures to enhance the efficiency in handling complaints.

(e) The overall increase in the number of complaints received in recent years is such that the Board has encountered certain difficulties in arranging PIC and IC hearings. If the proposals of the Board for setting up a panel to handle complaints and streamlining the procedures are taken forward, it would help improve the above situation.

The existing VSRO already stipulates that the Board's membership should include a medical practitioner or pharmacist and two persons who represent the interests of users of veterinary services. Besides, every veterinary surgeon has received proper training in the subject

(2) As more than one type of penalty may be imposed for each case, the total number of penalties imposed (27) is more than the number of cases substantiated (16).

of animal welfare in their professional education programme and made an oath in this respect to ensure that high standards of animal welfare are maintained in their practice.

Members of the public are welcome to express their views on the Board's complaint handling work during the consultation exercise to be conducted later on.

Provision of School Bus Services

11. **MS STARRY LEE** (in Chinese): *President, owing to high oil prices, and the fact that some buses providing transport service for students (school buses) have shifted to provide service for the tourism industry, the supply of school buses has fallen short of the demand. According to a questionnaire survey conducted among more than 200 primary and secondary schools, around 14% of the responding schools had invited a number of companies to bid for school bus service contracts, but they were in a predicament of "receiving zero bid". Among the schools which did receive bids for school bus service contracts, almost half of them indicated that the quotations for school bus fares had increased drastically by an average of 11.4%, and had even doubled in some individual cases, which will impose a heavy burden on parents. In this connection, will the Government inform this Council:*

(a) whether it will, before the commencement of the 2012-2013 school year, provide assistance to the schools which received "zero bid", so as to avoid students going to schools by themselves; if it will, of the details; if not, the reasons for that;

(b) whether it will consider putting school bus fares under the Student Travel Subsidy Scheme (the Scheme), so as to alleviate the burden on parents; if it will, of the details; if not, the reasons for that;

(c) in order to attract more operators to provide school bus service, whether the Government will consider encouraging other subsectors of transport services (such as tour service, hotel service, employees' service, international passenger service, and residents' service, and so on) to provide school bus service; and at the same time allow school bus service operators to run other bus services (including

residents' service) under the premise that they ensure the provision of school bus service; in addition, whether the Government will introduce greater flexibility to the current endorsement system, so as to allow operators of other bus services to use their free time to run school bus service as well;

(d) whether it will reconsider conducting a review of the regulatory framework and licensing system for non-franchised buses; and

(e) whether it will establish a mechanism to strengthen its regulation of the supply and the fare level of school buses?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, currently, primary and secondary schools arrange school bus service in response to the needs of parents for such service. Whether there is sufficient school bus service at a reasonable fare for schools to choose from depends primarily on the operation of the commercial market. According to the Transport Department (TD), there are at present a total of about 4 900 buses and light buses in the market providing student service. They include 3 543 non-franchised public buses (public NFBs) with student service endorsement, 60 school private buses, and 1 281 school private light buses (SPLBs). Public NFBs may, according to the endorsement(s) issued by the TD, provide a single or a combination of services, including student service. School private buses are a type of non-franchised private buses and are generally operated by a school direct to provide service to students of the school concerned or of the relevant school sponsoring body. SPLBs, commonly known as "nanny vans", are a special category of private light buses which can only provide carriage of the teachers and students to and from an educational institution.

Our reply to the respective parts of the question is as follows:

(a) The Education Bureau suggests in case there is tight supply of school bus service for a certain area, the school concerned may make necessary arrangements in the light of its own circumstances and needs. Such arrangements include forming a school bus network via discussion and co-ordination with schools within the same area or under the same school sponsoring body. Invitations for

quotations or tenders from operators of public NFBs or SPLBs for the provision of school bus service may then be jointly arranged.

Any person who wishes to provide transport service for students using a SPLB only needs to submit an application to the TD with details of the intended service, together with the relevant documentary proof of the individual or organization, as well as a letter of recommendation from the relevant educational institution.

Moreover, a school or a school sponsoring body may consider operating school private buses direct to provide transport service for their students. If a school or a school sponsoring body can provide sufficient justifications and the supporting documents needed, the TD will consider approving the application concerned.

(b) The Government has been providing through the existing Scheme a travel subsidy to needy students pursuing full-time studies at primary, secondary and post-secondary levels up to the first degree in a recognized institution and residing beyond a 10-minute walking distance from the school concerned. Eligible students passing the means test may make an application irrespective of the transport mode (including school bus) used.

The Scheme provides a cash subsidy on a non-accountable basis in a simple and direct manner to needy families at the earliest juncture, and leaves the students with sufficient flexibility to choose freely the transport modes for home-school travels.

The amount of travel subsidy is calculated on the basis of the average round-trip fare during the school term between the area that the student concerned resides and the area where his/her school is located. Such fare is computed and determined according to the average travel expense of commuting by public transport. The Administration is of the view that the existing method to calculate the amount of travel subsidy can already provide appropriate assistance to students with financial difficulties. It can also safeguard the proper use of public money. It is therefore a suitable arrangement.

(c) Under the current regulatory regime, operators of public NFBs may, in response to the demand for service and their operating conditions, apply to the TD for a single or a combination of endorsements. Such endorsements may be for tour service, hotel service, student service, employees' service, international passenger service, residents' service and contract hire service.

As at end March of this year, there were 7 069 public NFBs in the market. Three thousand five hundred and forty-three of them have obtained a student service endorsement under which they can provide student service. Of these 3 543 buses, over 3 400 are already holding other service endorsement(s). This means they can provide other service(s) alongside the provision of student service.

(d) and (e)

Under the current regime, operators of public NFBs may in response to market development and demand apply for an increase in the number of vehicles or variation of the type(s) of service(s) provided by their fleet. On the principle of free market operation, the TD will not regulate the supply of any particular type of public NFB service, or the supply of school private buses and SPLBs, as well as their fare levels.

From 2005 till now, the overall number of public NFBs has been largely stable. As mentioned above, operators of public NFBs may, in response to the demand for service, apply to the TD for a single or a combination of endorsements, including that for student service. Besides, the number of school private buses has also been generally steady. During the same period, the number of SPLBs has increased from about 1 100 to about 1 280.

Taking the above situation into account, the existing licensing regime can basically cater for market demand flexibly. Hence, the Government does not have any plan to review the regulatory and licensing regime for the aforementioned vehicles.

The TD will continue to monitor the changes in the number of the various types of public NFBs, school private buses and SPLBs, as

well as to keep in view their utilization. The TD will also continue to maintain close liaison with the trade through regular meetings, and to adjust measures in response to changes in supply and demand in a timely manner to cater for the development and demand of our society.

Sales Arrangement for Heya Green Flats

12. **MRS REGINA IP** (in Chinese): *President, some members of the public have written to me to express dissatisfaction with the sales arrangement for a private residential project, namely "Heya Green" (HG), developed by the Hong Kong Housing Society (HS). They have pointed out that as the materials used for the flats of HG (HG flats) are of high quality and their selling prices are reasonable, the market has reacted enthusiastically with over a thousand potential purchasers queuing overnight for viewing the show flats. They have also pointed out that while the project is already extremely attractive, the HS still offers estate agents a commission of 2% to 2.5% for every successful sales transaction, which may indirectly push up the selling prices and the practice is unreasonable. They opined that the HS should benefit the purchasers who are members of the public, not the estate agents. In this connection, will the Government inform this Council:*

(a) given that members of the public have proposed that the HS should return the full amount of commission to the purchasers who are members of the public (by deducting from the selling prices of HG flats the equivalent amount of the commission), or use this amount of money to subsidize other development projects of the HS, whether the authorities have assessed the feasibility of these proposals; if they have, of the results; if they cannot implement these proposals, the reasons for that; and the details of the measures adopted by the authorities in response to these aspirations;

(b) whether it knows the total amount of the aforesaid commission payable by the HS; of the land premium concessions provided to the HS by the Government in respect of HG as well as the respective land premium concessions provided by the Government to the residential projects of the HS in the past five years; and

(c) whether the authorities have the power to monitor the arrangements for appointing estate agents by the HS and paying them commission; if yes, of the specific details; if not, the reasons for that, and whether they will consider monitoring such arrangements?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the HS is an independent organization providing housing for and related services to the residents of Hong Kong. HG is a private residential project developed by the HS. It is one of six urban redevelopment projects entrusted to the HS (the entrusted projects) by the Urban Renewal Authority (URA) under a Memorandum of Understanding (MoU) signed by the URA and HS in December 2002 on strategic co-operation between the two organizations to facilitate implementation of the urban renewal programme. The strategic partnership is one of the recommendations in the "Report on the Review of the Institutional Framework for Public Housing" published by the Government in June 2002.

We have consulted the Development Bureau, Lands Department (LandsD) and HKHS in preparing the reply to this question. The co-ordinated reply to the three parts of the question is as follows:

(a) and (c)

The entrusted projects are implemented under the legal framework of the Urban Renewal Authority Ordinance (Cap. 563) (URAO) and the repealed Land Development Corporation Ordinance (Cap. 15). According to the MoU, in the implementation of the entrusted projects, while the HS will observe and comply with the URAO and the Urban Renewal Strategy and will follow the prevailing policies of the URA on acquisition and compensation, the HS is autonomous in the other aspects of the projects, including project planning, construction, promotion, marketing and sale or letting or other form of disposal of the premises in the new developments. The HS will meet all the costs and expenses involved and will be entitled to obtaining returns or be responsible for the deficits of the entrusted projects. The commissioning of estate agents to promote and market the sale of HG flats at a fee is thus an aspect that falls within the autonomy of the HS.

The HS has pointed out that HG is launched as a private residential project and appointing estate agents to promote the sale is normal market practice. The HS has further advised that the agency fee represents only a small portion of the total development cost of the project. In any case, the commissioning of estate agents and the payment of agency fees to them have no correlation with the selling price of the flats, which was determined having regard to first and second hand market transactions, the latest property price indexes and prevailing market condition, and the sales packages including payment terms offered by private developers for marketing their first hand residential developments.

(b) The HS has advised that the total amount of commission fees paid or payable to the estate agents for the sale of the HG development is in the region of $30 million.

According to the LandsD, in the past five years, there were these six urban renewal projects granted to the HS at nominal premium of $1,000. The amount of land premium foregone for the project site of HG at Po On Road/Wai Wai Road (K25) is $131 million. The total land premium foregone for the other five urban renewal projects entrusted to the HS, namely, the Castle Peak Road/Cheung Wah Street (K20) project, the Un Chau Street/Hing Wah Street/Castle Peak Road (K21) project, the Hing Wah Street/Un Chau Street/Fuk Wing Street (K22) project, the Castle Peak Road/Hing Wah Street (K23) project and the Shau Kei Wan Road (H21) project, is $809 million.

Structural Problems of Footbridges

13. **MR ALBERT CHAN** (in Chinese): *President, some members of the public have recently relayed to me that when the authorities conducted acceptance tests for some footbridges, they found that some of the footbridge components had failed the tests and, as a result, the completion of these footbridges was delayed. In this connection, will the Government inform this Council:*

(a) of the number of projects with the aforesaid situation in each of the past three years; of the names and locations of these projects, as well as the numbers of days for which the completion dates of the projects had been deferred; and

(b) whether the Government will take measures, including the imposition of heavier penalty on contractors in respect of projects that fail the acceptance tests, so as to avoid the recurrence of the aforesaid situation; if it will, of the details; if not, the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the reply to the two parts of the question is as follows:

(a) According to the records of the Highways Department (HyD), for the footbridges completed over the past three years, only one case involved delay in opening due to problems identified in certain components during the acceptance tests. The project concerned is the footbridge project at Tai Ho Road, Tsuen Wan (Project 162TB), with the proposed footbridge connecting Tsuen Wan MTR Station and the vicinity of Princess Alexandra Community Centre.

At present, the construction works of the footbridge concerned have almost been completed. The footbridge has originally been scheduled for opening in late May this year. However, hairline cracks have been found at the connecting points of certain footbridge components during the acceptance tests conducted by the HyD. To be prudent, the Department has immediately conducted detailed tests on the whole footbridge to ensure its safety.

The HyD estimates that the detailed checking of the footbridge can be completed within July this year at the earliest. The Department will assess and analyse the checking results and propose appropriate follow-up actions with a view to opening the footbridge as soon as possible.

(b) The HyD has always attached great importance to the quality control of footbridge projects. Professional staff from the consultants on site are required to closely monitor the construction procedures of the contractors during construction, so as to ensure the compliance of safety standards and requirements of the footbridge works. The HyD will also deploy staff to monitor and check the works progress of footbridges with a view to ensuring the quality of such works.

If problems concerning the works of the projects are found, such as the situation of the footbridge project at Tai Ho Road, Tsuen Wan mentioned in part (a) of the reply, the HyD will request the project consultant and contractor concerned to conduct detailed investigation immediately to review the project works. Experts will also be engaged by the Department for an independent assessment, and the footbridge will only be opened for public use when full compliance of safety standards is ensured. Depending on the investigation results, the HyD will critically examine the need of further follow-up actions, including action against those who are responsible for causing the problems of the works.

Gambling Activities in Amusement Game Centres and Family Entertainment Centres

14. **MR JAMES TO** (in Chinese): *President, some members of the public have earlier relayed to me that quite a number of games machines with gambling games are installed in amusement game centres (AGCs) for persons who have attained the age of 16 years. It has even been reported recently that the "gambling culture" has spread to family entertainment centres (FECs) (commonly known as "children's paradise") in various districts in Hong Kong, since roulettes and slot machines installed in many FECs have attracted quite a number of primary and secondary students to stay there for "gambling" after school. The reports have even pointed out that some FECs have "conversion" mechanism in place under which bonus points won in games may be converted not only into prizes but also into cash, which is similar to the situation in casinos. In this connection, will the Government inform this Council:*

(a) of the respective criteria adopted by the Government at present in vetting and approving applications for AGC licences and FEC licences; whether on-site inspections are conducted in vetting and approving these applications; if so, of the details; if not, the reasons for that;

(b) whether the police or authorized officers from government departments carry out annual inspections of FECs in various districts; if they do, of the number of such inspections;

(c) whether the police or the government departments concerned had received complaints against AGCs and FECs in the past three years; if they had, of a breakdown by type of complaints and district;

(d) given that under the existing requirements, the licensing authority will not give approval to the installation or placing of roulettes or slot machines in premises issued with Amusements with Prizes Licences (AWPLs), whether the police or the government departments concerned had instituted prosecutions in the aforesaid cases in the past three years; if they had, of the numbers of such prosecutions in various districts;

(e) given that under the existing legislation, no bet shall be wagered or paid at FECs but the aforesaid reports have pointed out that in some FECs, bonus points may be converted into cash, whether the police or the government departments concerned have received any complaint in this regard; if they have, of the number of such complaints and the penalties;

(f) whether AGCs and FECs may provide prizes in the form of cash coupons issued by supermarkets; if they may, whether the Government has considered reviewing the relevant legislation; and

(g) whether it knows the number of local institutions conducting counselling service on adolescent gambling and the types of service they provide; of the annual number of cases in which counselling had been provided by these institutions on adolescent gambling in the past three years?

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

(a) When handling a licence application, the Office of the Licensing Authority (OLA) under the Home Affairs Department will, in accordance with the requirements of the Amusement Game Centres Ordinance (Cap. 435), examine the appropriateness for the licence applicant to operate an AGC. The OLA will also inspect the proposed place to ensure that it is suitable for the operation of an AGC. In respect of the types of amusement game machines, the licence conditions stipulate that amusement game machines that contravene the Gambling Ordinance (Cap. 148) shall not be installed in any AGCs, and only those amusement game machines approved by the OLA may be installed in AGCs "for persons under the age of 16 years". No prizes, cash awards or cash refund shall be given in relation to the playing of any game, and no bet shall be wagered or paid at any AGCs.

Separately, holders of a Places of Public Entertainment Licence may apply to the OLA for AWPL in accordance with the Gambling Ordinance to conduct games of amusement with prizes in places commonly known as the "Family Entertainment Centres" (hereinafter referred to as "places with AWPL"). The OLA will approve the games in accordance with the licence conditions. Key conditions include licence holders shall not provide games with gambling elements in the licensed places, except for the AWPL games approved by the OLA, and no prize offered shall be a money prize.

(b) The police conducts inspections of places with AWPL from time to time in accordance with the Gambling Ordinance to ensure that the licensees have complied with the licence conditions in their operations. The time and frequency of such inspections depend on the past non-compliance records and relevant reports of the places concerned. Generally speaking, the inspection frequency for each place would not be less than once a year.

(c) Details of the complaints received by the OLA against the places with AWPL over the past three years are at Annex 1.

(d) Upon receipt of reports relating to a licensed place, the police will carry out inspections and conduct joint operations with the OLA as necessary to ascertain whether the business of the place concerned is conducted in accordance with the relevant licence conditions. If unauthorized amusements with prizes machines are used at the place, or the mode of operation may contravene the conditions of AWPL issued under the Gambling Ordinance, the police will take appropriate enforcement action based on the evidence collected, which may include issuing advice, warnings or instituting prosecutions in accordance with the Gambling Ordinance. The police have instituted prosecutions under the abovementioned situations in the past but have not kept prosecution figures separately.

(e) During the period between 1 January and 31 May 2012, the OLA had received a total of four complaints about places with AWPL that offered direct conversion of token money won in games into cash. According to the Gambling Ordinance, any AWPL licensee who contravenes the licence conditions commits an offence and is liable on conviction to a fine of $50,000 and to imprisonment for two years.

(f) As mentioned in part (a) above, an AWPL licensee should not offer any cash award. We will closely monitor the development and situation of the existing regulatory framework for the places with AWPL.

(g) We understand that quite a number of non-governmental organizations are offering various kinds of counselling and support services for tackling the gambling problems among young people.

The Ping Wo Fund established by the Government in 2003 is currently financing four counselling and treatment centres for problem and pathological gamblers. The centres mainly provide hotline counselling, face-to-face counselling and other professional treatment services. Their service targets include young people. The overall number of cases handled by the four centres is at Annex 2.

Annex 1

Table 1: Number of Complaints Involving AWPLs
Received by the OLA in the Past Three Years
(by District Council boundary)

Location of the centres being complained	*Year 2010*	*Year 2011*	*Year 2012 (as at 31 May 2012)*
Southern District	0	0	1
Yau Tsim Mong	0	1	0
Sham Shui Po	1	2	0
Kwun Tong	1	0	4
Kowloon City	0	1	0
Tsuen Wan	2	1	1
Kwai Tsing	1	0	0
Sha Tin	1	1	1
Tai Po	1	0	0
North District	1	1	1
Yuen Long	0	1	0
Tuen Mun	1	0	1
Total*	9	8	9

Table 2: Number of Complaints Involving AWPLs
Received by the OLA in the Past Three Years
(by category of complaints)

Category of complaints	*Year 2010*	*Year 2011*	*Year 2012 (as at 31 May 2012)*
Provision of games with gambling elements	2	1	0
Provision of games with violent elements or improper playing mode	1	1	4
Provision of amusement games with prizes without permission	7	7	7
Offer to convert tokens into cash	0	0	4
Others (for example, smoking, noise and security)	0	0	1
Total*	10	9	16

Note:

* As each complaint may involve one or more categories of complaints, the total numbers in Tables 1 and 2 are different.

Annex 2

Number of Cases Handled by the Four Counselling and Treatment Centres for Problem and Pathological Gamblers Financed by the Ping Wo Fund

Year	*Hotline counselling*	*Face-to-face counselling and other professional treatment*
2010	8 316	1 362
2011	8 003	1 313
2012 (first quarter)	1 997	325

Child Care Services for Children Aged Between Six and 12

15. **MR CHEUNG MAN-KWONG** (in Chinese): *President, according to the Offences Against the Person Ordinance (Cap. 212), if any person over the age of 16 years who has the custody, charge or care of any child or young person under that age wilfully assaults, ill-treats, neglects, abandons or exposes such child or young person in a manner likely to cause such child or young person unnecessary suffering or injury to his health, such person shall be guilty of an offence. However, the Neighbourhood Support Child Care Project only provides care services for children aged under six, and the quota for after school child care service (child care service) provided by some schools for children aged between six and 12 is limited. In this connection, will the Government inform this Council:*

(a) during school holidays and when parents are unable to take care of their young children aged between six and 12 temporarily due to various reasons, of the services provided or subsidized by the Government to provide support to the grass-roots parents concerned, together with a list of the short-term care services available at present for children aged between six and 12, the government departments/organizations responsible, as well as the quotas and service hours of such services in various districts;

(b) whether the authorities have assessed the demand for child care services for primary school students in various districts; if they have,

of the assessment results; if not, how the authorities plan the service quotas according to the demands in respective districts; and

(c) whether the authorities have reviewed if the service hours and locations of child care services provided in various districts at present can cater for the working hours of most parents; given that some women's groups have proposed that the Government should allocate funds to subsidize schools to co-operate with social service organizations in the provision of child care services at school so as to support grass-roots families, whether the authorities will consider the proposal; if they will, of the timetable for implementation; if not, the reasons for that?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr CHEUNG Man-kwong's questions is as follows:

(a) The Government is mindful of families' need for child care services. For children aged between six and 12, if parents are unable to take care of them temporarily because of work or other reasons, they may consider using the services of the After School Care Programme (ASCP). ASCP is operated by non-governmental organizations (NGOs) on a fee-charging basis, offering half-day support services for children aged between six and 12. Services provided include skill learning, social activities and meal service, and so on.

At present, a total of 140 ASCP centres operated by NGOs offer about 5 500 service places in all 18 districts across the territory. In general, ASCP centres provide services in various sessions from Monday to Friday till 7 pm or 8 pm. Individual centres may also consider extending the service hours until late evening and providing services on Saturday in response to the actual demand in individual districts.

Furthermore, the Social Welfare Department (SWD) provides assistance for low-income families to make use of ASCP services.

Under the "Fee Waiving Subsidy Scheme for ASCP" (FWSS) implemented by the SWD, needy and eligible families may apply to the NGOs operating ASCP for fee waiving.

(b) and (c)

As mentioned above, NGOs provide services in various sessions, of which the evening session operates till 7 pm or 8 pm. Individual centres may also extend the service hours until late evening according to the actual demand in individual districts to accommodate the working hours of parents.

As at March 2012, the overall quarterly utilization rate of the 5 500 ASCP places located across the territory in all 18 districts was about 85%; FWSS also has unused quota.

According to the present situation, ASCP and FWSS can both address the service demand. To ensure efficient use of resources, the SWD will conduct regular review on the demand for fee-waiving subsidies in various districts and will also liaise with NGOs concerned to increase their ASCP places to cope with additional demand as and when required.

Furthermore, the Education Bureau implements the "School-based After-school Learning and Support Programmes" (the Programme) to support the whole-person and all-round development of the needy students. Schools and NGOs may apply for funding under the Programme to organize diversified after-school activities for needy students with a view to improving their learning effectiveness, broadening their learning experiences outside the classroom as well as raising their understanding of the community and sense of belonging. The annual provision of the Programme has been increased from $75 million to $208 million in the 2011-2012 school year, benefiting about 228 000 eligible students. In tandem, the Education Bureau encourages schools to open up their premises for community services and activities to better support their students.

In response to community demand for enhancing after-school child care services to assist working parents, the Community Care Fund has allocated $40 million in the 2012-2013 school year to implement a one-year "After-school Care Pilot Scheme" (the Scheme). The Scheme aims to co-ordinate and integrate existing after-school learning and support activities organized by schools and NGOs for needy students. New elements will be injected into the existing programmes so that students can make better use of their time after school and before they return home for dinner to participate in more meaningful activities and learning, thereby alleviating the pressure of working parents at the same time. The Administration will review the effectiveness of the Scheme.

Government Support for Religious Groups

16. **DR LAM TAI-FAI** (in Chinese): *President, some members of religious groups have relayed to me that the Government lacks support for the religious groups in Hong Kong for a long time and has not formulated any appropriate support policy to facilitate diversified development of different religions in Hong Kong. They have also pointed out that owing to insufficient ancillary facilities, some religious groups often find it difficult to organize more religious activities of different types. In this connection, will the Government inform this Council:*

(a) whether it knows the number of different religious groups in Hong Kong in the past five years, and set out in table form the names of such groups, the number of believers, and the geographic distribution of their self-owned permanent sites and various religious facilities;

(b) of the respective government expenditure in support of various different religious groups in the past five years, and set out in table form the names of the religious groups receiving such support, and the amount and purposes of the funding support;

(c) whether it will consider reviewing the number of days of general holidays involving various religions, including providing additional

general holidays for other religions (for example, Confucianism, Taoism and Islam); if it will, of the details; if not, the reasons for that;

(d) whether it will, without affecting the total number of days of general holidays, consider setting individual religious days for other religions (for example, Confucian Day, Taoist Day and Islamic Day); if it will, of the details; if not, the reasons for that;

(e) whether any religious group had applied to the Government in the past five years for hiring vacant government properties (for example, vacant school premises or government quarters) to hold any form of religious activities; if so, of the details; if not, the reasons for that;

(f) whether any religious group had applied to the Government in the past five years for changing the use of vacant government properties (for example, vacant school premises or government quarters) to provide more ancillary facilities for religious activities; if so, of the details; if not, the reasons for that;

(g) whether it will offer interest-free loans to religious groups to help them acquire permanent sites and religious facilities; if it will, of the details; if not, the reasons for that;

(h) whether it had consulted different religious groups in the past five years to understand the actual difficulties faced by them in their development and their views on the Government's provision of support measures; if it had, of the details; if not, the reasons for that; and

(i) whether it will conduct a comprehensive review of the support policy for religious groups and provide different religious groups with different forms of support; if it will, of the details; if not, the reasons for that?

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

(a) Both the Basic Law and the Hong Kong Bill of Rights Ordinance give protection to Hong Kong residents' right to freedom of religious belief. Moreover, the laws of Hong Kong do not regulate the operation of religious groups. The Home Affairs Bureau does not make any registration of religious groups and, therefore, is unable to provide records related to such groups.

(b) and (g)

Under the prevailing policy, the Government may give policy support to religious groups' applications for Government land for the purpose of building religious facilities, and concessionary rates may be adopted in calculating the land premium of the floor areas occupied by such facilities. Other than this, the Home Affairs Bureau does not provide any other financial support or loans to religious groups for organizing religious activities or acquiring religious facilities.

(c) The Administration understands individual religious groups' requests for designating their commemorative days as general holidays. It should be noted that the consensus on capping the number of general holidays at 17 days in a year has been reached gradually through years of community-wide consultation, and that any amendments may have impact on the community, economy and people's livelihood. Therefore, we must handle the issue with care.

(d) Different religions have their own celebrative festivals. The Government does not set any restrictions on the commemoration or celebration of such festivals, and religious groups may set religious days of their own.

(e) and (f)

The following is the record over the past five years on religious groups' applications to the Government for hiring vacant government properties to hold religious activities:

Year	*Religious group*	*Details of application*

Year	*Religious group*	*Details of application*
2009	Hong Kong Evangelical Yan Din Church	Application for a short-term tenancy of the Ex-Man Kei Public School site in Lung Tin Tsuen, Yuen Long, New Territories for religious and other uses
2009	Atisha Buddhist Society Limited	Application for a short-term tenancy of the vacant government property at Dragon Road, North Point to hold religious activities
2010	Catholic Diocese of Hong Kong	Looking for vacant government properties for religious use
2011	German-Speaking Evangelical-Lutheran Congregation in Hong Kong	Looking for vacant government properties for religious use

(h) and (i)

The Home Affairs Bureau plays a co-ordination role in local religious affairs, by providing policy support to the development of various religious groups, maintaining cordial relationship with them, including the Colloquium of Six Religious Leaders of Hong Kong, and participating in their activities from time to time. While adhering to the principle of non-intervention of the freedom of religion and religious groups' internal affairs, we are happy to listen to their views and render assistance to them through appropriate channels.

Complimentary Upgrade of Air Tickets and Hotel Accommodation Offered by Airlines to Senior Government Officials Making Overseas Duty Visits

17. **MR PAUL TSE** (in Chinese): *President, as disclosed by some veterans of the aviation industry, in the past, airlines would intentionally offer super-VIP treatment such as luxurious suites and upgrade of air tickets to Secretaries of Departments (SoDs) and Directors of Bureaux (DoBs), including officials in*

charge of tourism and aviation policies, on their overseas duty visits. In this connection, will the Government inform this Council:

(a) what mechanism is in place and which Policy Bureau or government department is tasked to record and assess the appropriateness of the aforesaid air ticket upgrades, hotel accommodation and other super-VIP treatment offered by airlines;

(b) of the number of cases since the reunification in which SoDs and DoBs had accepted the upgrade of air tickets or hotel accommodation (including luxurious suites) offered by airlines, together with the specific details;

(c) whether it knows which airlines among the registered airlines in Hong Kong have frequently offered upgrade of air tickets and hotel accommodation to government officials; and

(d) whether it has reviewed if the aforesaid upgrades and treatment (especially the concessions and treatment suspected to be offered to officials in charge of aviation policies) will lead to partiality on the part of the SAR Government in the scrutiny and formulation of aviation-related policies and in the execution of the relevant measures, or will arouse similar suspicion among members of the community; if it has, of the outcome of the review; if not, whether it will immediately conduct such a review?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President,

(a) and (d)

"The Code for Officials under the Political Appointment System" (Code) and the Civil Service Regulations (CSRs) set out the guidelines regarding the relevant arrangements in respect of overseas duty visits for politically appointed officials (PAOs) and civil servants respectively. All PAOs and civil servants must act in accordance with the Code and CSRs. All PAOs and civil servants have to apply for approvals from their reporting seniors for their overseas duty visits, and draw the overseas susbsistence allowance

provided for transportation, meals and accommodation pursuant to the Code and CSRs. Respective bureau is responsible for keeping its own records of overseas duty visits made by its officers, including the arrangements for air tickets and hotel accommodation.

PAOs and civil servants are subject to various legislative and administrative provisions relating to prevention and handling of potential conflicts of interests, including acceptance of advantages or entertainment. Among these regulations is the Prevention of Bribery Ordinance (Cap. 201). It is an offence for PAOs and civil servants to accept any advantage without the permission of the Chief Executive or relevant reporting seniors.

(b) and (c)

According to the records of individual Policy Bureaux, none of the SoDs nor DoBs have accepted complimentary upgrade of air ticket or hotel accommodation offered by airlines.

Clearance Arrangement at Boundary Control Points for Vehicles of People's Liberation Army Hong Kong Garrison

18. **MR WONG SING-CHI** (in Chinese): *President, I have received complaints from a member of the public who pointed out that when he was crossing the boundary in his vehicle via Huanggang Control Point, he found that except for the drivers of vehicles with licence plates prefixed with "ZG" (the relevant vehicles), all other drivers crossing the boundary were required to undergo breath tests (tests). That member of the public had asked the law enforcement officers of Hong Kong at the control point (law enforcement officers) why the drivers of the relevant vehicles were not required to take tests. According to those law enforcement officers, as the relevant vehicles belong to the People's Liberation Army Hong Kong Garrison, they worried that if they conducted tests on the drivers, they might face "political pressure". In this connection, will the Government inform this Council:*

(a) of the number of the relevant vehicles travelling between Guangdong and Hong Kong in each of the past 10 years, together with a breakdown by year, travelling direction (from Hong Kong to the

Mainland and from the Mainland to Hong Kong) and control point;

(b) whether it knows the respective numbers of the various driving offences committed by the drivers of the relevant vehicles in Hong Kong and on the Mainland in each of the past 10 years, together with a breakdown by year, territory (Hong Kong and the Mainland) and offence;

(c) whether it has at present issued guidelines to the law enforcement officers, stating the need to conduct tests on all drivers (including those driving the relevant vehicles), or stating that exemption may be granted to the drivers of the relevant vehicles; if it has, of the details, and whether the guidelines are for internal reference only; if not, the reasons for conducting tests on drivers of all vehicles, except those drivers of the relevant vehicles, at control points;

(d) whether it knows the details of the aforesaid "political pressure"; whether it has assessed if the law enforcement officers, in handling the relevant vehicles or vehicles issued with Guangdong and Hong Kong licence plates in the course of their duties, are unable to perform their duties and carry out enforcement actions in a normal manner in the face of "political pressure"; if it has, of the details; whether the Government has received complaints lodged by the law enforcement officers, pointing out that they had faced "political pressure" or had been treated impolitely in performing their duties; if it has, of the number and details of such cases in each of the past 10 years, as well as the respective follow-up action taken by the Government, and set out the information by year and control point; whether the Government has reflected the situation to the relevant Mainland authorities; if it has, of the details; if not, the reasons for that; and

(e) of the measures taken by the Government in each of the past 10 years to assist those law enforcement officers who were unable to perform their duties in a normal manner in the face of "political pressure" or impolite treatment; whether it has reviewed the effectiveness of such measures; if it has, of the details; if not, the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to the various parts of the question is as follows:

(a) The Central People's Government is responsible for the defence of the HKSAR. According to the Hong Kong Garrison of the Chinese People's Liberation Army (the Hong Kong Garrison), the Hong Kong Garrison has all along been strictly complying with the Basic Law, the Garrison Law and other Hong Kong laws, including the Road Traffic Ordinance, Cap. 374. The drivers of Hong Kong Garrison vehicles co-operate with the Hong Kong Police to undergo alcohol breath test in accordance with the law. The number of cross-boundary trips made by Hong Kong Garrison vehicles and the distribution of these trips among various boundary control points (BCPs) are defence and military information and hence cannot be disclosed.

(b) According to the records of the police, there has not been any case of prosecution involving vehicles with registration marks consisting of the letters "ZG" (the relevant vehicles) for contravention of traffic-related legislation in the past 10 years. Separately, the Administration does not have any information regarding the relevant vehicles being involved in traffic offences in the Mainland.

(c) To combat drink driving, the police randomly select drivers, including those driving Hong Kong Garrison vehicles, to require them to undergo alcohol tests at various locations, including land BCPs, in Hong Kong. Given that the tests are conducted on a random basis, every driver passing through land BCPs has a chance to be chosen for inspection, though not every such driver eventually undergoes the test.

(d) and (e)

The police do not have any information showing that there have been occasions on which police officers on duty could not properly carry out their duties or take enforcement action regarding the relevant vehicles owing to "political pressure".

Civic Awareness Among Hong Kong People

19. **MR CHEUNG KWOK-CHE** (in Chinese): *President, the voter turnout rate of last year's District Council (DC) Election was 41.49%, which was slightly higher than the 38.83% in 2007. Early this year, I commissioned academics to conduct a survey in the social work sector, and the preliminary results revealed that nearly 30% of the registered social workers (RSWs) did not vote at last year's DC Election, yet 90% of RSWs indicated that they would vote at the Legislative Council Election in September this year. In addition, it has been reported that the number of people attending this year's 4 June vigil reached a record high of over 180 000, while the number of people attending each of the vigils held in the past few years also exceeded 150 000, and quite a number of them were youngsters. In this connection, will the Government inform this Council:*

(a) given that the aforesaid survey has reflected that the desire for voting of RSWs at DC elections is lower than that at the Legislative Council elections, and the overall voter turnout rates of the past two Legislative Council Elections were higher than those of DC Elections, how the authorities will promote active voting at DC Elections among members of the public;

(b) whether the Constitutional and Mainland Affairs Bureau will propose to the Central Authorities to adopt a lower nomination threshold for implementing universal suffrage for the Chief Executive Election in 2017; if it will, of the details; if not, the reasons for that; and

(c) whether the Government will propose to set up in Hong Kong a museum of the defense against the Japanese invasion, a museum of the establishment of New China, a museum of the Cultural Revolution and/or a museum of the 4 June incident with local characteristics, so as to enhance the understanding of members of public of the major historical events of our country and to foster sentiments to care about our country's development; if it will, of the details; if not, the reasons for that?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, the Government's reply to the questions raised by Mr CHEUNG Kwok-che is as follows:

(a) For each DC election, the Government launches a publicity programme to promote the election, to encourage voter participation in DC election. The messages put across include: that the work of DCs is closely related to the daily life and well-being of the people of Hong Kong, and that each vote can make a difference; and the importance of honest and clean elections.

Taking the publicity programme of 2011 DC Election as an example, the publicity programme lasted from August until the polling day. We adopted a phased approach in building up the intensity of the publicity.

The first phase of the programme focused on reminding prospective candidates, their agents and the public of the importance of clean elections. This message was promulgated through posters and Announcements in the Public Interest (APIs) on TV and radio. A series of filmlets was screened on infotainment channels and other media platforms to educate the public on some of the major provisions in the Elections (Corrupt and Illegal Conduct) Ordinance. To complement the clean elections message and as a prelude to phase two, we also launched some promotional activities mainly through posters and APIs, to remind people of the importance of DCs and the election.

The second phase of the programme was launched to tie in with the commencement of the nomination period of candidates and was marked by a public ceremony. The bulk of the promotional activities were conducted within this phase. There were new versions of posters and APIs to reinforce our message, and we made use of a wide variety of channels to maximize publicity. The publicity channels used included TV, radio, government websites, and major public transportation networks. Election forums in selected constituencies were also arranged. At the district level, banners and buntings were put up at prominent locations. During

this period, an API to call for nominations from prospective candidates and an API to drive home proper voting procedures were also screened.

In addition, before the polling day, there were daily count-downs to heighten the atmosphere for the election. Special TV programmes were also screened. There were 11 TV APIs and four radio APIs for the publicity programme.

The voter turnout rate of the 2011 DC Election is 41.49% and the voter turnout exceeds 1.2 million. Both figures are higher than the corresponding figures of the 2007 DC Election. This shows that the civic awareness of citizens has increased over time and citizens show more support to DC elections and the work of the DCs. At the same time, it shows that the government's publicity programme has been effective.

(b) The Decision adopted by the Standing Committee of the National People's Congress in December 2007 relating to the methods for selecting the Chief Executive and forming the Legislative Council in the year 2012 and on issues relating to universal suffrage made it clear that when universal suffrage for the Chief Executive is implemented in 2017, the nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region.

The community should have thorough discussion to forge a consensus on how the nominating committee shall in accordance with democratic procedures nominate candidates for the office of the Chief Executive. In this regard, the next-term Government may wish to consider the views relating to universal suffrage consolidated by the Administration during the public consultation on the electoral method for selecting the Chief Executive and for forming the Legislative Council for 2012.

(c) The permanent exhibitions of the Hong Kong Museum of History, Hong Kong Museum of Coastal Defence and Dr SUN Yat-sen Museum under the management of the Leisure and Cultural Services Department (LCSD) cover topics of modern China and Hong Kong. From time to time, the three museums also organize thematic exhibitions related to the history of modern China and Hong Kong, including "The East River Column and the Hong Kong-Kowloon Independent Brigade" (2004), "The 8-Year War of Resistance" (2005-2006), "A Century of China" (2009-2010) and "Centenary of China's 1911 Revolution" (2011). The LCSD has no plan to set up a museum with focus on the history of modern China.

Demonstration Area Outside Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region

20. **MR KAM NAI-WAI** (in Chinese): *President, the footpath outside the entrance of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) was originally 9 m in width, but on the ground of beautifying the road section concerned, the Government constructed a planter there in 2002, leaving the footpath with a width of 3 m only. Some participants of processions have relayed to me that the large planter outside the LOCPG has greatly narrowed the footpath and obstructed their demonstration activities. The Chairman of Independent Police Complaints Council (IPCC) indicated recently at a radio interview that removal of the planter outside the LOCPG would facilitate processions, demonstration activities, and even enforcement actions of the police. In this connection, will the Government inform this Council:*

(a) given that the Chairman of IPCC indicated that removal of the planter would facilitate processions, demonstration activities, and even enforcement actions of the police, whether the authorities will consider taking on board the views of the IPCC Chairman by removing the planter outside the LOCPG; if they will not, of the reasons; whether the authorities need to consult the LOCPG before removing the planter;

(b) given that some participants of processions have complained that demonstrators at the back cannot move forward whenever a large

number of people gather outside the LOCPG, and the authorities have indicated that they will not close more traffic lanes for participants of processions and demonstrations due to the limited space at that location, whether the authorities have other contingency measures in place to facilitate participants of processions going near the main entrance of the LOCPG without obstructing the traffic of Connaught Road West outside the main entrance of the LOCPG; if so, of the detailed measures; if not, the reasons for that;

(c) besides removing the planter and putting in place other contingency measures to enlarge the demonstration area outside the LOCPG (demonstration area), whether the authorities will suggest the LOCPG to move away from the Central and Western District and set up its office in a district with more public space;

(d) whether the large planter was constructed by the authorities at the request of the LOCPG; whether they have assessed if the large planter keeps demonstrators far away from the demonstration area, resulting in suppression of the public's freedom of expression; and

(e) given that some participants of processions have pointed out that the conflicts between the police and participants of processions have become more serious recently, and that the police have adopted a more stringent approach to handle demonstrations, whether the authorities will consider giving the public a clear account on the strategies and arrangements adopted by law enforcement officers in handling public gatherings, demonstrations and processions, and so on, so as to address the concerns of the public; if they will not, of the reasons for that?

SECRETARY FOR SECURITY (in Chinese): President, this question involves different policy areas. The Security Bureau is responsible for the policy of the police in handling public order events. We have consulted the bureau concerned on the reply to other parts of this question. Our reply to the various parts of the question is as follows:

(a), (c) and (d)

According to the information provided by the Transport and Housing Bureau, the Government proposed in 2002 to carry out traffic improvement works on Connaught Road West to improve the road and traffic condition thereat. The proposed works included relocating the exit of a layby previously located at the section of Connaught Road West between Western Street and Water Street to a position that would provide a better driving sightline, away from the stairs of the Western Street footbridge. The proposed works would improve the undesirable situation that vehicles had to weave in and out of Connaught Road West with poor driving sightline. The construction of the planter at the relevant section of Connaught Road West was part of the works project and was meant for appropriate beautification of the road section concerned. The width of the footway is 3 m after the road improvement works, which is in line with the width of the road section of Connaught Road West to which it is connected, that is, both road sections are 3 m wide. With a width of 3 m at present, the footway conforms with the relevant standards in the Transport Planning and Design Manual.

It is noted that the Central and Western District Council had discussed the above planter and considered the submissions by different organizations and residents of nearby buildings. After discussion, the motion for removal of the planter was not passed. The SAR Government will not comment on the location of the LOCPG as it is a decision made by the LOCPG.

(b) and (e)

Hong Kong residents have the rights and freedom of speech which are protected under the Basic Law and the Hong Kong Bill of Rights Ordinance. The police always handle public meetings and processions in a fair, just and impartial manner in accordance with the laws of Hong Kong. The operational policy of the police is to endeavour to strike a balance by facilitating all lawful and peaceful public meetings and processions on one hand and, on the other hand, reducing the impact of such meetings and processions on other

members of the public or road users and to ensure public order and public safety. Participants of public meetings or processions, in exercising their freedom of expression, should, under the premise of observing the Hong Kong law and without affecting public order, proceed in a peaceful and orderly manner.

Generally speaking, upon receipt of a notification of a public meeting, the police will contact the event organizers as early as possible and maintain close communication with them to understand their needs and aspirations and to provide advice and assistance on crowd management. Police Community Relations Officers may also be present during an event as appropriate to act as a bridge of communication between the organizer and the Field Commander.

The police will, having taken into account the number of participants and the information provided by the organizer, past experience in handling similar events and other operational considerations, such as the geographical constraints of the venue concerned, the nature and content of the event, the anticipated number of participants and the actual situation of the demonstration, as well as balancing the impact on local residents, traffic conditions and road users, consider setting up designated public activity areas (DPAAs), with a view to facilitating the conduct of public order events and ensuring public safety and public order.

In relation to the handling of public order events outside the main entrance of the LOCPG, the police have all along strictly followed the abovementioned principles and rendered assistance so that public order events can be conducted in a peaceful and orderly manner. Concerning the arrangements for DPAAs, the police will, in general, set up DPAAs on the pedestrian walkway of Connaught Road West and outside the main entrance of the LOCPG to enable as far as possible that public order events are conducted in a safe and orderly manner. To ensure public safety and public order, the police will also make appropriate manpower arrangements and adopt crowd control measures on the spot in the light of the circumstances and needs of such public order events.

As Connaught Road West outside the main entrance of the LOCPG is a trunk road with heavy traffic, it is inadvisable to set up a DPAA in that section of the road as it may cause danger to demonstrators, other road users and the police. Moreover, such an arrangement will unnecessarily affect the daily lives of people living in the District, including the assistance and services of emergency vehicles to be provided to residents in the vicinity, as well as the emergency vehicular access to the Western Harbour Crossing.

In 2011, over 6 800 public meetings and processions were held in Hong Kong, that is, a daily average of more than 18 events, and most of them were conducted in a peaceful and orderly manner. The police will continue to maintain communication and consultation with the organizers and take measures to ensure public order and safety during public order events.

PRESIDENT (in Cantonese): I now suspend the meeting until 2.40 pm.

1.36 pm

Meeting suspended.

2.40 pm

Council then resumed.

BILLS

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Council is now in Committee and continues to examine the original clauses 1, 3, 4, 7, 8, 9, 11, 13, 24, 27, 28, 32 to 36, 38 and 39

of the Personal Data (Privacy) (Amendment) Bill 2011 and the amendments thereto.

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

PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2011

CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, you may continue to speak on these clauses and amendments.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Chairman, last time I was talking about the amendment to clause 24 of the Bill, which the Administration intended to propose. Now I will go on from that point.

Clause 24(7) of the Bill proposes to add the new sections 46(7) to 46(9) to the Personal Data (Privacy) Ordinance (PDPO) to allow the Privacy Commissioner for Personal Data (the Commissioner) to disclose matters to a counterpart authority outside Hong Kong without being bound by the secrecy provisions if certain conditions are satisfied.

Having considered the views raised by the Bills Committee on the relevant arrangement details, we propose to introduce amendments to specify clearly that the Commissioner may make such disclosure only if the purpose is to enable or assist the counterpart authority outside Hong Kong to perform its investigation or enforcement functions, or if the purpose is for the proper performance of the Commissioner's statutory functions or proper exercise of his statutory powers. In the former situation, legislation basically similar to, or serves the same purposes as, the PDPO must be in force in that place, and the counterpart authority must undertake to be bound by the secrecy requirements imposed by the Commissioner. In the latter situation, certain conditions must be satisfied, including the counterpart authority's undertaking to be bound by the secrecy requirements imposed by the Commissioner.

I wish to thank Ms Cyd HO, Ms Emily LAU and Mr Alan LEONG, who remarked in their speech on the Second Reading that this amendment had improved the original provisions of the Bill.

Section 50 of the existing PDPO provides that where, following the completion of an investigation, the Commissioner is of the opinion that a data user is contravening or has contravened a requirement under the PDPO, he may serve on the data user an enforcement notice, directing the data user to take such steps as are specified in the notice to remedy the contravention or the matters occassioning it.

Clause 27 of the Bill proposes to make a number of amendments to section 50 of the PDPO, including substituting the words "remedy the contravention or the matters occassioning it" with "remedy the contravention". The Commissioner had expressed to the Bills Committee his concern about some of the deleted words, that means "remedy the matters occassioning it". Given that non-compliance might be caused by indirect factors, such as inadequacy of the data user's policies, measures or procedures, the Commissioner was worried that deletion of the words mentioned by me just now would undermine his power in dealing with the relevant indirect factors in the enforcement notice. We considered that the new wording proposed had already covered the meaning of the original expression, and it could also improve the flow of that provision. However, having regard to the Commissioner's concern and after discussion with him, we propose to add the words "prevent any recurrence of the contravention" in section 50.

Clause 28 of the Bill proposes to move section 64(9) of the existing PDPO to the proposed section 50B. The Bills Committee opined that the formulation of "any other person" in this provision might be unclear. After consideration, we propose to change "any other person" to "a prescribed officer". Since "prescribed officer" is already defined in section 2 of the PDPO, the persons covered by the provision will become clearer.

Clauses 32 and 34 of the Bill respectively propose to add the new sections 59A(2) and 63C(2) to the PDPO to provide a defence for persons acting in good faith. Having regard to the views of the Bills Committee, we agree that the relevant provisions are unnecessary. Thus the provisions read out by me just now will be withdrawn.

Clause 33 of the Bill proposes to add the new section 60A to the PDPO. The purpose is to reflect the right of refusal to disclose information which might result in self incrimination under the common law. The Commissioner was worried that the wording in this provision might impede his enforcement and prosecution work in respect of section 19(1) of the PDPO. After consideration, we now propose an amendment to provide that the pre-requisite for the requirements under sections 60A(1) and 60A(2) shall be compliance with a request under a provision of data protection principle 6 or section 18(1)(b) of the PDPO.

One of the amendments proposed in clause 34 of the Bill is to add the new section 63D to the PDPO. This new section provides exemption for records transferred to the Government Records Service. Since the transferred records may include other records apart from those of historical, research, educational or cultural interest, we propose to delete the phrase "of historical, research, educational or cultural interest".

Ms Cyd HO has expressed concern about the formulation of this section. After discussion with Ms HO, we propose to amend the formulation of this section, stating clearly that personal data contained in the relevant records is exempt from the provisions of data protection principle 3 only when the records are used solely for the purpose of appraising such records to decide whether they are to be preserved, or for organizing and preserving the records. Access to or use of records containing personal data transferred to the Government Records Service is still subject to data protection principle 3 if such access or use does not serve the purposes mentioned just now.

The other amendments proposed are mainly amendments made to improve the drafting, consequential amendments made in response to the amendment of other provisions, and those which rearrange the position of the provisions to make the arrangement of such provisions more reasonable.

Chairman, the above amendments have been discussed in detail and endorsed in the meetings of the Bills Committee. I implore Members to support and pass the amendments. Thank you, Chairman.

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

MR JAMES TO (in Cantonese): Chairman, I will just talk about clause 8 of the Bill, which is "section 14A added".

Chairman, concerning verification of data user returns, it is mentioned in that clause that all other ordinances which carry a secrecy provision shall prevail. What I mean is, with regard to the Government's proposal, we have considered several options in the Bills Committee. One of them is for the Government to list out which existing ordinances contain provisions contradictory to or in conflict with the Personal Data (Privacy) Ordinance (PDPO), but the Government has replied that it is impossible to identify all the ordinances.

The Government has cited a few examples. For instance, banks are data users subject to the restriction of the Banking Ordinance under certain circumstances, while the Securities and Futures Commission or other financial institutions are bound by the Securities and Futures Ordinance and even the Inland Revenue Ordinance. Thus they are unable to discharge the obligation to disclose information under the PDPO. I can understand that. It is because, having looked at the whole context and legal interpretation in these several examples and compared those ordinances with the PDPO, we agree that when the relevant provisions are in conflict, it is reasonable to allow those ordinances rather than the PDPO to prevail.

However, the problem is that the Government cannot merely quote a few examples and then formulates a piece of legislation, claiming that should there be any conflict between other ordinances and the PDPO, the other ordinances will indiscriminately prevail. In other words, the Bills Committee or the Legislative Council has indeed made such a decision without thorough consideration in the course of scrutiny.

Neither can we say, as stated in the arguments put forward by the Government earlier, that careful considerations had already been given to the relevant circumstances when the principle of confidentiality was provided in the other ordinances. Why did I say it is impossible that considerations had already been given? It is because when the various ordinances were enacted, the PDPO had not yet come into existence. It was not until 1996 that the PDPO was

enacted. If the relevant ordinances were enacted before 1996 and they have all along never been amended, when the PDPO is amended, especially when section 14A(3) is added, it cannot provide that should there be any conflict between the PDPO and other ordinances, those ordinances will definitely prevail. Section 14A should not be enacted unless we have conducted a conscious and in-depth scrutiny to examine all other ordinances and concluded that in each and every situation, all other ordinances should indeed prevail.

Chairman, regarding this point, I cannot agree to the relevant proposal. Of course, I have considered whether there is any solution. I indicated to the Government in the Bills Committee that there was no way to list all the other relevant ordinances in the course of scrutiny, but if the Government could explicitly set out 10 or 20 ordinances which were commonly used, together with a list of relevant organizations such as monetary, financial and government bodies with which we often had contact, as well as situations which we often came across, we might hold discussion on those 10-odd ordinances and then decided whether such ordinances should prevail. The Government was worried that the list would not be exhaustive. Yet, having an incomplete list is better than requiring me to sign a blank cheque which allows the Government to decide that all other ordinances, like those two or three examples it has given, will definitely prevail over the PDPO. Chairman, I find this way of doing things not quite responsible. However, the Government rejected my proposal, that means to explicitly set out the, say, 10 to 20 ordinances.

In the event where a situation outside these 10 to 20 ordinances really arises in the future, the Government can simply propose to amend the legislation immediately. These 10 to 20 ordinances can even be set out after the principal legislation by means of simple comparison in the form of a schedule. Should such a situation really arise in the future, the ordinance which must prevail over the PDPO can be placed in the schedule in the form of subsidiary legislation. Then, the schedule can be amended in a faster way, with one or two more ordinances added at any time. I think this can solve the problem. It is like we have clearly considered all kinds of situations. I believe it is impossible for Members of this Council to approve such a general power, placing the PDPO below other ordinances when we have not clearly considered all kinds of situations.

MS CYD HO (in Cantonese): Chairman, I will speak on the several amendments proposed by the Government one by one. The first one which I am going to talk about is clause 24(7) of the Bill. The Government has added sections 46(7) and 46(8) to the principal legislation to empower the Privacy Commissioner for Personal Data (the Commissioner) to disclose Hong Kong people's personal data to authorities outside Hong Kong.

It is provided in this clause that such authorities outside Hong Kong must undertake to be bound by the secrecy requirements imposed by the Commissioner, but during our scrutiny of the Bill, we questioned what we could do if the counterpart commissioner or authority in other places did not adhere to the agreement signed with the Commissioner. Hong Kong does not have any jurisdiction over these places. If the other party breaks the agreement and recklessly uses Hong Kong people's personal data or even does something harmful to the data subject, what can we do? There is actually no answer. We can only count on mutual trust, believing that both parties are credible and will respect the agreement. However, if the other party really does not comply with the agreement, actually there is nothing we can do. Given the poor rule of law and the lack of protection for human rights and personal privacy in many places outside Hong Kong, this clause has caused much concern.

If this amendment which empowers the Commissioner to exchange data with other places is passed, it will be highly dangerous should such a situation arise. In that case, we have to completely rely on the Commissioner's vigilance to assess whether the other party will adhere to the agreement and his accurate personal judgment to decide whether Hong Kong people's personal data should be passed to authorities outside Hong Kong. Although the system is reliable, the person-in-charge of the statutory body concerned is always appointed by the Chief Executive, so we really have to depend on the Chief Executive's choice of candidates. If we are fortunate, the appointee is a trustworthy person with honourable reputation. Yet, in most cases, we seem to be unfortunate. Thus, during our scrutiny of the Bill, we had strong reservations about this clause.

In this regard, the Government has proposed an amendment to add the condition in section 46(7)(b), which includes "in the opinion of the Commissioner, there is in force in that place any law which is substantially similar to …… this Ordinance". It is also stated in the relevant paper that the

foreign places concerned may exchange data with Hong Kong only if they have also put in place an institution similar to the Hong Kong Office of the Privacy Commissioner for Personal Data. We have learnt from the relevant paper that there are at least three countries in the world which satisfy this condition, namely, Canada, Australia and New Zealand. The three of them are both Commonwealth and democratic countries which attach greater importance to human rights. If the foreign places have set up a privacy commissioner's office with statutory power by law, which is properly regulated under the law, we will feel more assured. However, now this clause is applicable not only to Canada, Australia and New Zealand, but also to any foreign place which has set up a similar institution.

Although this amendment has slightly relieved our doubt, we are still worried because other places which lack human rights protection with poor rule of law can easily set up an institution named the privacy commissioner's office and introduce a piece of legislation at any time. The question is whether they will comply with it or not. As we could see, many places, including the People's Republic of China, have a constitution which contains provisions for the protection of human rights. But, no one complies with them, right? Hence, can this clause totally ease our mind now? The answer is of course negative. However, we know it is indeed difficult to specify in the principal legislation that it is only applicable to several countries. The best we can do, as mentioned by Mr James TO just now, is to add in the schedule that we agree to exchange data with certain places. Nevertheless, even if we have confidence in these places right now, we cannot say for sure whether the situation will change in future.

Chairman, another solution suggested by us is to require the Commissioner to enhance transparency and provide information in the annual report, setting out the places with which he has exchanged data in the past year and stating the circumstances under which such data are exchanged. This is the minimum level of monitoring.

Chairman, the aforesaid viewpoints have been raised by us in the course of scrutiny. I hope that these views can be put on record. I also hope that the Administration will advise the Commissioner to bear in mind these views put forward by us, so as to complement the inadequacy of the legislation. Thank you, Chairman.

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

MR WONG YUK-MAN (in Cantonese): Chairman, we have a few doubts concerning the commencement date in clause 1.

The Personal Data (Privacy) (Amendment) Bill 2011 (the Bill) will not come into operation until October this year, while a separate date will be appointed for the implementation of the most important provisions like clauses 20 and 21. According to the report of the Bills Committee, the Privacy Commissioner for Personal Data (the Commissioner) will take about nine months to prepare the relevant guidance notes and undertake other preparatory work. In case problems arise in the interim period, what should be done? If those data users conduct massive direct marketing activities in the interim period so as to circumvent this new rule, how will the Government handle the matter? Is the relevant legislation tantamount to being non-existent? There is a third question which we have regarded as worth thinking about during the earlier drafting of the Bill or after we have read about it from the newspaper report. That is, actually is there any previous stipulation that states the immunization from criminal liability, and is there the need to get another letter of consent when the personal data is to be used again?

Regarding the amendment proposed by the Government to clause 1, which sets the commencement date of provisions unrelated to direct marketing or the legal assistance scheme on 1 October 2012, while a separate date will be appointed for the commencement of provisions related to direct marketing, we will abstain on this amendment.

Of course, we understand that the Commissioner will need time to prepare the relevant guidance notes and undertake other preparatory work, but there is no way we should wait nine months for the implementation of the most important provisions relating to direct marketing activities. Take the grandfathering arrangement under the new section 35D(1) as an example. If the Government is unwilling to set a cut-off date for this as proposed by the Commissioner, data users will definitely be able to conduct massive direct marketing activities during the interim period to circumvent the new requirement. It is because as long as they have used certain personal data before the commencement date, they will be exempt from this new requirement after the commencement date. So, basically,

this is a grey area. In that case, how will the Government deal with such a loophole? Hence, we cannot support passing the decision on the commencement date of provisions relating to direct marketing to the Secretary for Constitutional and Mainland Affairs.

Now on the face of it, there is some flexibility in the provisions. Let us take a look. Originally, in clause 1 "Short title and commencement", there were only two subclauses: (1) This Ordinance may be cited as the Personal Data (Privacy) (Amendment) Ordinance 2011, and (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette. Now subclause (3) has been added, and subclause (2) has been amended slightly. Subclause (1), "This Ordinance may be cited as the Personal Data (Privacy) (Amendment) Ordinance 2012", remains unchanged, whereas subclause (2) is changed to: "Subject to subsection (3), this Ordinance comes into operation on 1 October 2012". Then subclause (3) is added: "Sections 20, 21, 37(2), 38 and 42 come into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette".

Of course, some people will opine that the practice of leaving the decision on the commencement date to the executive authorities should not be abused. As a result, a lot of people may support the present approach of fixing separate dates, but our consideration is the actual situation. If those provisions which must come into effect at a later time can only be left to the decision of the Secretary, in the event where the Legislative Council has passed amendments not to the Government's liking, it may delay publishing the relevant notice. Of course, the possibility of such a case is not very high, since most amendments proposed by Members will be vetoed in separate voting, and amendments that will be passed are certainly proposed only after Members have reached an agreement with the Government. We are well aware of this point from past experience. What we are worried is that if the commencement notice for some provisions needs to be deferred, sometimes the Government may, under the pressure of the business sector, delay publishing the notice. Thus, now that the Under Secretary has advised that the Government is going to publish the commencement notice within nine months, we hope such an undertaking will be included in the provisions in future. It will be the best if it can be put down explicitly.

If it is advised in a verbal undertaking that this commencement notice will be published within nine months at the latest, but then the promise is not honoured, what can we do? By that time the Government has already changed. Now what interests us most is, today is 27 June, and three days later, the Under Secretary will retire. If the scrutiny on the Bill cannot be completed within these three days, what will happen? Of course, it can be completed. The Under Secretary can rest assured. Now we are already working in high gear, and we are not going to request a headcount. Otherwise it will take 10 more minutes or so.

Chairman, sometimes I need to digress a little. There is no fault on our part. Would you ask them to come back to the meeting? Actually holding the meeting overnight is of no use. Even if the meeting is extended for two hours, it will be of no use either. If I request a headcount, the meeting will have to be aborted sooner or later. It is only a matter of time.

Nevertheless, this is an important Bill, and there is the factor concerning the handover …… in fact, the Bill on first-hand properties is in a similar situation. A few days later, Secretary Eva CHENG will cease to be the Secretary. What will happen next is even more ridiculous. We have no idea if it should be under the charge of the Development Bureau or the Transport and Housing Bureau. Now the Government has to continue to adopt the structure of three Secretaries of Departments and 12 Directors of Bureaux, and when the structure of five Secretaries of Departments and 14 Directors of Bureaux can come into existence is still unknown. So I find this handover period rather embarrassing. When we discuss the commencement date of the Bill, I have to raise this issue.

Chairman, we are not only capable of filibustering. We are also capable of making speeches, and we are doing our utmost, buddy. With a huge pile of documents, we work so hard that we almost collapse. How come Members did not speak? The blame is laid on us again. In view of such important legislation, they are supposed to speak. They usually speak in high profile about this and that bill on people's livelihood. Now all of them seem to have become mute ……

CHAIRMAN (in Cantonese): Mr WONG, you have digressed from the question. Please focus your speech on the relevant provisions.

MR WONG YUK-MAN (in Cantonese): Of course I have digressed from the subject. How will I forgo the opportunity to make use of the discussion to put forth other views in my speech? The truth is, do not put the blame on us. We have spent a lot of efforts on the amendments of each Bill. The filibuster war has already ended last month.

Actually Mr James TO, who is sitting here, also had such experience. At that time there was the Interception of Communications Bill. Is that right, Mr TO? That Bill was read the Third time and passed by the Legislative Council in the form of a Private Member's Bill on 28 June 1997 before the reunification. At that time the Government, of course, leniently allowed the democratic camp to stand in the limelight for a while. Later, on the pretext that the implementation of the Interception of Communications Ordinance would seriously affect law enforcement, the Special Administrative Region (SAR) Government ……

CHAIRMAN (in Cantonese): Mr WONG, please do not digress from the question.

MR WONG YUK-MAN (in Cantonese): You have not listened to my speech carefully. Now I am explaining that delaying the commencement notice will give rise to such a problem. OK? That is why I have quoted the example concerning Mr James TO in the past. Do not say that I have digressed from the subject.

That Ordinance had been passed before the reunification, yet on the pretext that the Ordinance would seriously affect the law-enforcement agencies in combating serious crimes and protecting the safety of Hong Kong, the SAR Government refused to promulgate its commencement date, making the Ordinance merely nominal without any practical legal force. Later, "Long Hair" filed for a judicial review, and the Court held that the Government lost the case. The Government then drew up the Interception of Communications and Surveillance Bill in 2006 to replace the original Interception of Communications

Ordinance. This Interception of Communications Ordinance was never implemented because the Government refused to publish its commencement notice. In what way have I digressed from the subject, Chairman?

Now I am going to talk about the practice of setting separate commencement dates. As I have mentioned earlier, the original text reads: "Subject to subsection (3), this Ordinance comes into operation on 1 October 2012." Besides, "Sections 20, 21, 37(2), 38 and 42 come into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette." That is to say, the power lies with the Government.

In our present discussion on the commencement date, we have worries about such a practice. As I have said earlier, its merit is that not everything will be decided by the executive authorities. Yet there is also a demerit, that is, what if the executive authorities delay publishing the commencement notice? For example, we have concurred with the Under Secretary that the notice will be published in nine months, but eventually, nine months later, it is still not published. The Secretary is no longer in office, and his successor will not publish the notice. What can we do? This is basically why I need to quote the example concerning Mr James TO.

Of course, the former Administration may not necessarily be related to the present. Yet deferring the publication of the commencement notice will give rise to such a problem which is worth our concern. That is also why we hold reservations and even will not express our support after looking at the amendment proposed by the Government to clause 1. However, we cannot raise objection because some people may actually consider that setting separate dates is a more flexible approach, though there is no way to guarantee when the commencement notice will be published and what impact will be caused if the delay is too long.

In fact, during the drafting of the legislation, the Commissioner has expressed his concern about the commencement date, and the Secretary is very clear about it. The Office of the Privacy Commissioner for Personal Data (PCPD) is worried that traders will take advantage of the vacuum period of the legislation and send promotional emails or SMS for direct marketing in large amounts, not to mention there is also WhatsApp nowadays. If the other party knows the phone numbers of members of the public and there is no way to keep

them in check, promotional messages will keep pouring in. Thus, as a matter of fact, many people are worried that traders may evade future regulation in such a way. When some of our friends discussed the relevant issues, they also expressed their concerns in this regard. Yet the Administration does not concur with the PCPD's recommendation.

Hence, in our discussion on the commencement date, we have to relay some people's worries over such a problem with the publication of the commencement notice. Being Members of the Legislative Council, we are also obliged to reflect their worries during our scrutiny of the Bill and discussion on the amendments. Therefore, in the coming discussion on the amendments, we will continue to speak.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Ms Cyd HO, you are speaking for the second time.

MS CYD HO (in Cantonese): Chairman, what I am going to talk about next is clause 34 of the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill), which means the new section 63D added to the principal legislation. The relevant provisions are laid down on pages C3902 and C3903 of the Bill.

What is this new section about? It involves an exemption. That is, if the personal data collected is transferred to the Government Records Service (GRS) for retention, such data will be exempt from the provisions of data protection principle 3. Data protection principle 3 stipulates that the data collected can only be used for specific purposes which have been specified explicitly during its collection. For example, when we apply for an identity card, driving licence or library card, it is not stated in the application form that the information completed by us will be transferred to the GRS in the future.

We have always been highly concerned about the retention of archives, so we agree to provide such an exemption. However, there are something seriously wrong with some of the provisions under this exemption. The definition on "archive" is given, in the provisions under which item (a) provides that it

"includes appraising the record to decide whether it is to be retained". We certainly support this point. We even doubt whether there are enough professionals in the GRS, thus worrying that they may not know how to do the appraisal. Otherwise, the Government would not have destroyed a large amount of records unnecessarily when it moved to the new headquarters.

Nevertheless, the following item (b) has something seriously wrong. Under the definition of "archive", item (b) directly provides that it "does not include …… for purposes unrelated to the management or preservation of the record". What is meant by unrelated purposes? It refers to accessing the record from the repository. Chairman, this additional provision is indeed upsetting.

Regarding the retention of archives, it does not mean that after you have merely filed a stack of documents or some electronic records, you can claim to have discharged the duty of record retention. A record has its own meaning, in that it will be made available for perusal in the future. For example, in the foreign countries, there will definitely be a provision concerning archives, which expressly states how many years later the archives will be opened for public perusal.

For instance, documents relating to the Sino-British negotiations over Hong Kong have been handed to the National Archives of the United Kingdom in London for retention since 1984. I know that every year, academics will make use of the time in summer vacations or Christmas holidays to go there to browse the latest archives which have been opened. Archival information of 1967 has already been disclosed earlier, and now information of 1984 is going to be released shortly. Then the archives of 1997 will also be opened successively. Just think about it. If we spend money on building an archive room where the humidity and temperature are suitable for keeping paper, but the documents inside will simply be kept there all the way and will never see the light, then what is the point of retaining those documents?

Moreover, retention of archives is a means to monitor the Government at the minimum, since meetings which do not have to be made public, minutes which do not have to be instantly disclosed to the public and actions or decisions which absolutely lack transparency will be made known to the public some years later. As such, even if we are having closed-door meetings without public

monitoring today, we will remain vigilant because we know that the present information, decisions and behaviour will be revealed to the public in 25 or 30 years.

For example, regarding whether someone has said that anti-riot squads would have to be deployed, that tear gas would have to be used and so on, even though we are unable to get the relevant information today, we will be able to obtain it in 25 or 30 years. It is only if the person concerned thinks that 30 years later, he is no longer in this world, and he is also not worried that his children will receive weird glances from other people, that he will dare to continue to say this kind of things now.

If the provisions in the archival law specify that all top secret records shall be published some years later, then we will be more responsible for what we say and the decisions we make in closed-door meetings now. This is one of the reasons why archival law is important to public interests.

Of course, the Government will tell us that at present, it has been working in such a way. For instance, currently it has not been provided that records of the Executive Council, after being filed, will be disclosed for public perusal. So, the provisions in the Bill do not differ much from the present situation. However, once it is laid down in the legislation, it will be more difficult for members of the public to request the Government to disclose such records in the future, because the Government will then claim that under the legislation passed by the Legislative Council, disclosure of such information is against the law.

For this reason, I originally intended to propose an amendment to replace the word "but" between items (a) and (b) under clause 63D(2) of the Bill with "and", and change the negative expression "does not include" in item (b) to provide that it includes accessing the record. Only then will the preservation and management of archives bear a complete meaning. Nevertheless, we know very well that such amendments will never be passed in separate voting. Thus, after we had discussed with the Under Secretary a number of times, we decided not to include prohibition from accessing the record in the legislation, and I also withdrew my amendment, leaving this item aside for the time being.

Despite this, I promise here that we will certainly continue to follow up archival law. Archival law should cover the following meaning of "record". "Record" does not merely connote "retention". It further connotes retention for public interests as well as disclosure for public access out of public interests. That is the true meaning of record in the context of public administration.

Besides, during our discussion, we have mentioned the reason for exempting these records when they are filed. For some historical figures, when they were young, they had not yet demonstrated their potential and had not yet become great figures. Take the incumbent Chief Executive as an example. When he first joined the Government to take the post of Executive Officer, we did not know that he would end up in the present situation. Information about his application for the Government's Executive Officer at the beginning, as well as information about how he later became an Administrative Officer from an Executive Officer and how he was sponsored by the Government to study overseas, is actually kept on file. Had he not been someone who has taken a place in history — Chairman, my remark is neutral. It is neither complimentary nor derogatory, though I am afraid it carries a more derogatory sense today — at first when we kept such information, we did not anticipate that this person would become someone whom we need to observe and watch. The said information is certainly his personal data, but when he eventually becomes someone who is recognized as having a historical role, his information is not his personal data any more. Rather, it becomes historical information which the public should know.

As a result, we consider that in the course of the retention of archives, since this kind of information will be available for public access, it also needs to be granted exemption. Otherwise, even though such information can be retained in the file cabinets, it will lose its meaning if it cannot be accessed by the public.

After all, we actually need to formulate a comprehensive set of archival law, including these definitions, operational procedures and various sound regulatory controls in such legislation.

The Chief Executive-elect, Mr LEUNG Chun-ying, has promised on certain occasions to consider formulating an archival law. I hope he will really keep this promise. Irrespective of whether having archival records is favourable to him or not, the formulation of an archival law is for the sake of public interests

in Hong Kong. We need to retain all relevant information. When we draw up an archival law, we will definitely introduce relevant amendments and consider again how to perfect the existing provisions in section 63D. Thank you, Chairman.

MR ALBERT CHAN (in Cantonese): Chairman, I would like to discuss the penalty in the amendment to clause 8, that is, "In the proposed section 14A, by adding — '(5A) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3'".

Chairman, as I said last time, when compared with other ordinances, the whole punitive provision is exceedingly mild. After I went back, I looked up several ordinances, one of which was the Housing Ordinance (Cap. 283). Section 26 of this Ordinance provides that any person who makes any statement to the Authority which he knows to be false or misleading as to a material particular shall be guilty of an offence and shall be liable on conviction to a fine of $500,000 and to imprisonment for one year. Any applicant for Comprehensive Social Security Assistance (CSSA) who provides the Social Welfare Department with false information may be prosecuted under the Theft Ordinance (Cap. 210), and the maximum penalty is imprisonment for 14 years. Chairman, regarding the provision of false information in application for student financial assistance, under the Crimes Ordinance (Cap. 200), if any person being required or authorized by law to make any statement on oath for any purpose makes a statement which involves false information, he shall be liable on conviction to imprisonment for seven years.

Chairman, the relevant section of the legislation which I brought up just now involves only a fine at level 3. Such a mild punishment utterly baffles me. It involves the provision of false information all the same. How come the enforcement of the other Ordinances is so stringent — I have just read out the term of imprisonment. How come the penalty under this provision is so terribly mild and lenient?

A few days ago, when I was chatting with my friend, he suddenly enlightened me — I hope the Permanent Secretary could respond to it later — saying that offenders under this Ordinance were civil servants, whereas offenders under other Ordinances were members of the public. Those who provide false

information in application for public housing are the general public. Of course, some of them may be civil servants. Those who provide false information in application for CSSA are the general public, and they are treated as thieves. Those who lodge applications with the Student Financial Assistance Agency are ordinary citizens. Should they provide false information instead of true and accurate information on oath, they will be prosecuted and the penalty is imprisonment for seven years. The penalty for the provision of false information in application for student financial assistance is imprisonment for seven years, whereas that in application for CSSA can be imprisonment for as high as 14 years, and that in application for public housing is imprisonment for one year. However, civil servants who, in discharging their duties, provide false information owing to work will merely be fined under the Personal Data (Privacy) Ordinance (PDPO). My friend said that as the whole piece of legislation requires civil servants to enact legislation to punish civil servants, they will certainly be let off lightly. If a penalty must be imposed, a mere fine will do.

So, that is the system in Hong Kong. When tycoons are involved, senior officials will bias towards consortiums through policy-making. The Budget is a typical example, offering tax rebate and rates concession. One company was granted rates concession amounting to some $90 million. The "N have-nots" remain to be "N have-nots", but the Budget was passed anyway. Economic policies again transfer benefits to big consortiums. In return, big consortiums hire senior officials upon their retirement. A senior official rode on a private jet, travelled on a private yacht and enjoyed all kinds of luxury food while he was in office. Red wine and maotai wine were delivered in boxes to him one after another. Five years later, a large amount of them have left unconsumed. After his retirement, boxes of wine have been moved to the Office of Former Chief Executives for continual consumption. I wonder for how many more years he can continue to enjoy the maotai wine which costs $28,000 a bottle. Senior officials blatantly continue with the transfer of benefits, while the formulation of legislation is tilted and biased in the same way.

With regard to the provision of false information, how come the penalty concerning CSSA, the penalty under the Housing Ordinance and the penalty in respect of the Student Financial Assistance Agency cannot be a mere fine similar to that under the PDPO? Why is it not the case? They all the same concern the

provision of false information after all. Under this Ordinance, if a civil servant does not do what he should do at work, has he made a more serious mistake when compared to the general public who fill in wrong or inaccurate information, and thus needs to receive punishment? It is reasonable to require civil servants to fulfil their duties. If they do not do their job properly and only get a good job — it is like our Chief Executive's slogan "get the job done", but actually it is "get a good job" — civil servants are paid to discharge public duties. If they fail to do their job properly and provide false information, why should their punishment be lighter than that for the general public in respect of their applications for student financial assistance, CSSA and public housing? It is the provision of false information all the same. Why is there such a big difference in the penalty for professional civil servants who provide false information, which carries no term of imprisonment at all? Can money do everything? A mere fine can end the trouble, while other members of the public are bullied. Every month my office receives requests for assistance from kaifongs. When a member of the public was filling in an application for public housing, the father might not be very clear about his daughter's income because his daughter had simply made a casual remark. So he intended to fill it in first and deal with it later. Afterwards, it was found that the information was false. I once received a case where the difference was only $90. Actually the difference would not affect the result of the public housing application, but the Housing Department conducted an all-out investigation which nearly pushed that kaifong to the brink of suicide and made him live in fear, worrying whether he would be prosecuted and sent to jail.

Thus, after looking at the provisions of this piece of legislation and comparing them with the severe punishment under the provisions of other Ordinances, I feel enraged because such a tilted and biased system is unfair to members of the public who receive punishment under other Ordinances. Hence, Chairman, as this term of the Legislative Council is approaching the end, I suggest that after the new term of the Legislative Council commences, its relevant Panel should comprehensively review matters concerning penalties and punishment under all the laws in Hong Kong, and then conduct public consultation to make a value judgment and determine whether we should have a more reasonable standard for the penalties for members of the public who have committed a crime or broken the law.

Of course, the Permanent Secretary could explain why the punishment in this regard can be particularly light whereas the punishment under other

Ordinances is more severe, and why members of the public may have to face 14 years' imprisonment for providing a tiny bit of false information. Therefore, Chairman, we will object to the relevant amendments, especially the one to clause 8. I wonder if it can be voted separately later, since it was only recently when we looked at the provisions again carefully that we found this absurdity.

Some people say that we are filibustering, Chairman …… in order to speak more and make more comments on this piece of legislation, we have examined the provisions all over again carefully. Neither "Yuk-man" nor I were members of the Bills Committee on Personal Data (Privacy) (Amendment) Bill 2011, so we did not actively participate in the many meetings convened by the Bills Committee. However, recently, when we examined the provisions afresh, we found certain amendments hardly acceptable, especially after comparing with other Ordinances. I have explained the reason earlier, and I am not going to repeat it. As I suggested just now, I very much hope that upon commencement of its new term, the Legislative Council will comprehensively review the provisions relating to penalties under different ordinances, particularly when some of them provide for imprisonment and some do not, so as to do justice to the general public. As a result, those with power and influence will not enjoy any privilege, while the general public will not get hurt and suffer.

CHAIRMAN (in Cantonese): Mr CHAN, which clause do you request to vote separately?

MR ALBERT CHAN (in Cantonese): Chairman, I do not know if I have got it wrong. There are a number of amendments to clause 8. I am particularly against the part which reads "In the proposed section 14A, by adding — '(5A) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3.'". Actually the addition of subsection (7) to section 14A is the same. But, Chairman, my focus is on subsection (5A), that means the part about adding (5A) to section 14A. We find this too lenient.

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

MR WONG YUK-MAN (in Cantonese): Chairman, I would like to talk about the amendment to clause 3, since I have some doubts about it and find it quite interesting. The amendment to clause 3 is "By adding before subclause (1) — (1A)". Should (1A) not be added after subclause (1)? I think the amendment to clause 3 is really weird. Why is (1A) added before and not after subclause (1)?

Perhaps I have read it wrong, or there are indeed other problems. Nevertheless, I would like to point out that we support revising the definition of "data user return" to include returns corrected under section 14A(5). Mr Albert CHAN has brought up a question earlier. That is, we support certain provisions but object to some others under the current discussion. The approach of voting on these provisions en bloc has really put us in a difficult position. If they are not voted separately, I cannot but abstain on all of them. I must make this clear here.

Section 14A is about verification of data user returns. This is a section which the Bill proposes to add. Let me quote the stipulation in subsection (5) as follows: "Subject to subsection (3), a person on whom a notice is served under subsection (1) or (4) must comply with the requirement within the period specified in the notice." We find the addition of section 14A appropriate because it allows the Privacy Commissioner for Personal Data (the Commissioner) to play a certain role in respect of the data user returns and makes contravention of the requirement an offence.

We have some opinions on penalties. Regarding contravention of section 14A(5), the amendment proposes to add section 14A(5A) to provide for the punishment to be imposed. Yet I have noted that the punishment prescribed in section 14A(5A) for contravention of section 14A(5) — if you do not have the relevant provisions at hand, you will simply have no idea what I am talking about — is different from the punishment set out in section 14A(6) for contravention of section 14A(1) and the punishment set out in section 14A(7). Sections 14A(6) and 14A(7) provide that a person who commits such an act is liable on conviction to a fine at level 3 and to imprisonment for six months. The problem exactly lies here. There is no provision which provides for imprisonment for contravention of section 14A(5). We consider that the objective results of violation of the different requirements set out in section 14A are the same, so the penalties should also be the same to facilitate the same sentence. The

punishment which I have quoted earlier is slightly different from the one prescribed in section 14A(5A) which I am referring to right now. Thus I think there is something wrong with it.

Besides, regarding the definition of "relevant person", the Bill proposes to add a new paragraph (c) to cover mentally incapacitated persons. We support amending the definition of "relevant person" to include a new meaning. However, with regard to the concurrent deletion of paragraph (c) in the original definition and the repeal of section 2(2) in the related deletion, I consider the relevant restriction unnecessary. For example, can an individual authorize a law firm to exercise the rights provided for the relevant person under the legislation? Hence, we opine that paragraph (c) in the original definition can simply be retained.

Clause 4 of the Bill proposes to amend section 8 (Functions and powers of Commissioner) to add section 8(2A) which is quoted as follows: "The Commissioner may impose reasonable charges for any promotional or educational activities or services carried out, or any promotional or educational publications or materials made available, by the Commissioner in the course of the performance of the Commissioner's functions under this Ordinance." The work relating to the functions and powers of the Commissioner in section 8 quoted above is actually what the Office of the Privacy Commissioner for Personal Data (PCPD) should do. In particular, after the present Bill has brought forth such significant changes to its regulatory framework, the PCPD should step up its efforts to conduct more promotional and educational activities. Instead of enhancing the enforcement authority of the PCPD, the Administration is amending the legislation to allow the Commissioner to levy charges. It is kind of putting the cart before the horse.

Recently, there is a piece of news about the PCPD, which has enlightened us a little. It is reported that a female office assistant who had allegedly obstructed or perverted an Assistant Personal Data Officer's execution of duties prescribed in the Personal Data (Privacy) Ordinance was bound over to be of good behaviour by entering into her own recognizance for one year. That day, when this female assistant received the summons of the PCPD, she did not know what to do. After calling her supervisor to seek an instruction, she mistakenly thought that she should not take the summons. She immediately chased and intercepted that Assistant Personal Data Officer in an attempt to get back the

evidence that the summons had been served successfully, because if a summons is taken when it is dispatched, that means it has been served successfully. So she wanted to get it back, yet for this reason, she got herself subject to legal liability and had to face criminal punishment in the end. Chairman, this case reflects the public's lack of knowledge of this Ordinance. We opine that the PCPD should enhance promotion and publicity work. Hence, we object to the addition of section 8(2A).

The PCPD argued that it would charge a fee for products designed for specific sectors on the basis of recovering part of the cost. We find that unreasonable too. Enhanced promotion and publicity will ultimately benefit the general public. Levying a fee will dampen these sectors' desire to receive information, thereby hindering them from knowing more about the Personal Data (Privacy) Ordinance. For instance, the Registration and Electoral Office and the Independent Commission Against Corruption will from time to time organize seminars for candidates and political parties taking part in elections, but they will not charge any fee. Having made this comparison, one will find that there is something really wrong with such a practice.

Does the PCPD have insufficient funds? How is its financial status? Perhaps the Secretary can give supplementary explanation when she replies later of why there is the need to charge a fee. Section 8(2A) provides that the PCPD may impose reasonable charges for promotional or educational activities carried out or relevant materials made available during the performance of its functions. Judging from our common sense, it is not justifiable. Therefore, we object to the enactment of this provision.

If the PCPD carries out any promotional or educational activities or services in respect of the various new statutory requirements and points out the need for extra resources in providing any promotional or educational publications or relevant documents and materials, can it seek additional funding from the Legislative Council? However, the funds allocated in this regard will not be too much. Despite this, if the PCPD charges a fee on each occasion and even imposes a fee for carrying out educational and promotional work, does it wish the public to learn about the requirements under this piece of legislation after all?

Besides, the Government has not made any necessary amendment to section 8 (Functions and powers of Commissioner) of the Ordinance. Instead of

dealing with the necessary items, it provides that a fee may be charged. The Government is unwilling to empower the PCPD to conduct criminal investigation and prosecution work. This can be deemed as a "dead knot" because the whole Ordinance is in fact a "toothless tiger". It turns out that many of our statutory bodies or this and that commissioner's office are all "toothless tigers".

The Independent Police Complaints Council (IPCC) is just the same. How can it not be regarded as a "toothless tiger"? For instance, in the recent case relating to the conduct of that ridiculous "number one man", it has carried out an investigation, but what then? As the saying goes, "The penal statutes do not go up to great officers", not to mention that such punishment cannot be counted as any penalty at all. Only the lowest ranking officers were held responsible, and even the superiors who gave them the instructions had no need to take any responsibility. However, the IPCC had pointed out clearly that the matter was questionable.

As a result, is it quite a bit unacceptable to merely provide for the imposition of fees when amending section 8? Surprisingly, to carry out promotions, conduct educational activities and issue publications to expound on the Ordinance, reasonable charges shall be imposed. That is the stipulation in section 8(2A). Concerning this provision relating to the functions of the whole PCPD, the Government has not tried to expand its power despite the lengthy argument between the "toothless" PCPD and the Government over this issue. The PCPD is most familiar with matters about who has infringed on people's privacy or violated the requirements under the relevant legislation, but still, relevant cases are referred to the police for criminal investigation. You see, how ridiculous this is! The Government is amending the legislation, but it has not taken this issue into consideration. We really find it utterly baffling.

The PCPD is the institution which is most familiar with this Ordinance. Yet, cases have to be referred to the police for investigation, and then it is up to the Department of Justice to decide whether to initiate prosecution or not. If the PCPD does not have enough power, how can the Commissioner decide if such cases are substantiated? They do not have the power to demand the relevant person to provide information. In that case, what can they do? Therefore in the past, when there were arguments over some relevant issues, the PCPD was indeed at a disadvantage. With the Constitutional and Mainland Affairs Bureau acting as its higher authority, the PCPD can only follow the Bureau's instructions

and let the Bureau handle everything on its behalf. Hence, this problem of powers and responsibilities is an obvious example of the present lack of a clear delineation of powers and responsibilities in the whole Government. The legal boundary or delineation of powers between the Constitutional and Mainland Affairs Bureau and the PCPD is actually unclear.

As a result, we find something seriously wrong with adding section 8(2A) in amending the provision relating to the Commissioner's functions and powers, and we hope the Government will give it further consideration. If we are going to amend the legislation, as a matter of course, we wish to do it better. At present, the PCPD is the institution which enforces the Personal Data (Privacy) Ordinance, but it is a "toothless tiger" which has no means to do it at all. Hence, if you read that part concerning the Commissioner's functions and powers in the Ordinance carefully, you will find something really wrong. Now the Government even includes subsection (2A) in section 8 to impose reasonable charges. I think such a proposal of legislative amendment has indeed gone too far.

Regarding the proposal to introduce amendments to the provisions on administration, under which section 8 (Functions and powers of Commissioner) is amended by clause 4 of the Bill, though the Government is going to repeal "computer" and substitute it with "information", we do not find anything wrong with it. However, we object to the addition of the provision to impose reasonable charges for promotional or educational activities or services carried out. Thank you, Chairman.

CHAIRMAN (in Cantonese): Ms Cyd HO, you are speaking for the third time.

MS CYD HO (in Cantonese): Chairman, I am not questioning your decision. I am only talking about the situation now. So many amendments are now grouped together in a joint debate that the situation now is indeed a little like that of the European Parliament. They start the debate on Monday and continue with the debate item after item until Thursday. On Friday afternoon, all the items are put to vote together. Hundreds of people go in and out of the Parliament. With members going in and out all the time, it is very likely that they cast a wrong vote as they may not know which amendment is put to vote at the moment. Hence,

during a joint debate, we have to make sure which amendment is under discussion. In particular, I hope that when the amendments are later put to vote, Members can return to the Chamber earlier and ask the Member sitting next to them which amendment is going to be put to vote. Furthermore, I hope that clauses can be debated individually in future deliberation on bills.

Chairman, may I now talk about section 64, which is a new provision. I am not talking about the original section in the principal legislation, but a new section to be introduced as a Committee stage amendment. The proposed section 64 in the Blue Bill is a little different from the final amended text now. The original section 64 is really very difficult to understand. It states that a data user who contravenes this section without reasonable excuse commits an offence, and then it continues with a series of provisions to which this section does not apply.

Even if I read all these inapplicable provisions out, Members will not understand what I am reading, except that I am reading out a series of numbers: "…… under section 14(11), 14A(6), 15(4A) or (7), 18(5), 22(4), 31(4) ……". Chairman, I will not waste time on reading them all out because there are totally 26 inapplicable provisions. Even a professional lawyer needs to study these provisions carefully one by one in order to know in what ways the provision is inapplicable. To people without any legal training like us, it is even more difficult to understand. We only find a series of numbers, like the six numbers in Mark Six. We simply do not know what these provisions are referring to.

Hence, Members have raised a point during scrutiny of the Bill, and that is, instead of drafting it this way, the Government should explicitly state the situation to which the section is not applicable; what can be taken as a defence; and the scope to be exempted. Such that, in the future when people refer to section 64 of the Personal Data (Privacy) Ordinance (PDPO), they will understand that a person will commit an offence if the person discloses any personal data that was obtained without the data subject's consent, so on and so forth.

The provision proposed by the Government now is an amended version, which was sent to all Members on 30 May. Members can take it out to have a look. It sets out a defence and I wish to put it on the record, "…… (i) disclosed the personal data for the purpose of a news activity as defined by section 61(3) or

a directly related activity; and (ii) had reasonable grounds to believe that the publishing or broadcasting of the personal data was in the public interest." Apparently, it concerns the media.

Let us return to section 61(3). In the principal legislation, the title of section 61 is "News", and section 61(3) is about "news activity". However, they are not written as clearly as the above. The original section 61(3) provides exemption from the provisions of data protection principles 3 and 6, but it is written in a relatively ambiguous manner. The paragraph I just read out is clearer, specifying that if the disclosure of such personal data is in the public interest, it can be considered as a defence even when the data subject's consent is not obtained.

Chairman, press freedom is a kind of freedom that we always have to protect because it involves the right to know. Only when the public know the details and the whole course of the incident that they can monitor people with public power effectively.

That is why during this term of the Legislative Council, we have invoked for an unprecedented number of times the power under the Legislative Council (Powers and Privileges) Ordinance to put urgent questions and propose debates, in order to get some explanation. Moreover, recently, the integrity of certain important government officials, such as the incumbent Chief Executive and the Chief Executive-elect, has been called into question, thus making certain of their information become a matter of public concern. If, however, these government officials can invoke the PDPO to stop the press from reporting such information, it will indeed be a big problem. Corruption and bribery will spread very quickly then.

Hence, we welcome this amendment, which is written in a more explicit manner. However, we are perplexed about why the Administration puts in place a defence instead of an exemption. In other words, why does the Administration not exempt all news activities and news agencies? We are in a quandary as we are again left with two difficult choices. On the one hand, powerful government officials have a strong incentive to suppress freedom of the press; on the other, some news agencies indeed refuse to abide by the code of integrity and intrude on people's privacy. It is thus very difficult to lay down one-off in the law that all

news activities be exempted. Otherwise, some other people will then be victimized. Hence, it is against this perplexing backdrop that we accept this defence.

As far as I understand, if a certain case is taken to the court or likely to be taken to the court, it will actually have a chilling effect on individual reporter. The only way to ensure that reporters can boldly do their job of news reporting is that their news agencies will support them and act as a back up.

Chairman, on the other hand, I wish to talk about media organizations that lack integrity. Many celebrities have complained that some entertainment reporters or paparazzi intruded into their privacy. They have considered the PDPO not strong enough to protect their privacy because they lodged complaints many times in the past but to no avail. Nevertheless, I wish to cite a recent example in which a celebrity was taken a telephoto of his half nude body at home. The Privacy Commissioner for Personal Data (PCPD) accepted his case and later concluded it with an enforcement notice. Hence, is the PDPO strong enough to protect privacy? This recent example shows that it can do so. However, it also depends on whether the PCPD at the time is determined to enforce the PDPO. It is true that when the privacy of many celebrities was intruded in the past, the PCPD then did not accept these cases for investigation. That is why celebrities are so aggrieved that they have publicly advocated legislating against stalking and prohibiting reporters from hunting them for news. However, we have to make it clear that if a piece of legislation is introduced to prohibit reporters from stalking celebrities for news, there will be no way for many acts of corruption, crime and power abuse to be revealed to the public. Hence, we must choose the lesser of two evils and try to strike a balance.

I know that a piece of anti-stalking legislation will be tabled to the Legislative Council in the future because the subject is under consultation now. By then, an intense debate will certainly be held. However, coming back to the PDPO, it is evident that it can render privacy protection to celebrities.

On the contrary, Chairman, the privacy of some participants in the pro-democracy movement has really been seriously trampled on because they do not have a news agency to back them up or defend their case in court. They have sustained great suffering. We should still remember Miss CHAN

Hau-man, a student of the University of Hong Kong who has courageously fought for democracy. To some people, she may be too courageous and has crossed the line. As a matter of fact, she has indeed been at the forefront of many activities. I remember that a magazine has captured photos of her at her home taking a bath and brushing her teeth in the morning. She lives in a village house and does not always lower the blinds. The magazine has published photos of her at home walking around in very causal clothes. The PCPD then did not take the initiative to investigate into the case. But, a similar case involving a celebrity recently has been properly handled. Hence, apart from the system itself, it also hinges on who the responsible person is, and whether the PCPD is determined enough. I believe Miss CHAN Hau-man has been deeply hurt in this incident. She has hid herself and totally disappeared after this magazine report. It is fortunate that Miss CHAN Hau-man has a loving and open-minded father. If her family members do not support her after reading these reports, she would be hurt more.

Chairman, here, may I welcome the Administration introducing this amendment. But, as I have said earlier in discussing the previous two amendments, we will deal with the much more controversial anti-stalking legislation next. I personally hope that it will not be a piece of sweeping legislation. I believe the legislation will be able to render protection to some people, but it will also seriously undermine the public's right to know. Whether fellow Members will be working inside or outside this Council, I hope that they will still keep a close eye on the discussion on the anti-stalking legislation, such that not only privacy of the people and the interests of the vulnerable will be protected, but also the public's right to know.

Thank you, Chairman.

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

MR WONG YUK-MAN (in Cantonese): It seems that Members have no interest in scrutinizing this Bill in relation to the privacy of personal data. I sincerely request the Chairman to summon them back to the Chamber.

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

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

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr WONG Yuk-man, this is the third time you speak.

MR WONG YUK-MAN (in Cantonese): Chairman, I have already talked about clauses 1, 3 and 4 of the Bill proposed by the Government just now. Now, I am going to talk about clause 7 of the Bill. The provision proposes to delete the interpretation of "prescribed information" in section 14(10) and put the interpretation of the term as used in the Ordinance under section 2. This approach is more desirable, particularly because the term "prescribed information" appears not only in section 14, but section 15 and Schedule 3 as well. On the other hand, we also agree with the new provision proposed to be added under clause 7 of the Bill. Hence, as we just said, there are some provisions which we agree, some we oppose, and some about which we have reservations. However, the Government decides to put them to vote in a single lot, which is quite troublesome. Nonetheless, since the Government considers that they would definitely be passed, it should be very safe.

Clause 7 of the Bill proposes to add section 14(11) which relates to offence. The provision prohibits any data user from knowingly or recklessly supplying any information which is false or misleading in a material particular when submitting a data user return. In law, the threshold for proving the so-called elements of "knowingly" or "recklessly" is relatively high. When enforcing the legislation, it will be quite difficult to convict a data user who supplies false or misleading information. We consider that as it is the responsibility of data users to verify the material particulars in the data user returns, a relatively lower threshold should be adopted. The amendment also proposes to delete section 14(9)(c). Let me cite the provision as follows, "subsection (3) shall not operate to prejudice the generality of section 67(4)(c)". We can tell at a glance the text itself is quite incomprehensible. What is meant by "shall not …… prejudice the generality"?

I do not understand why no improvement has been made so far. But it is not too serious after all. Let us look at the original provision. There is a very funny sentence which I will come to later. Originally, we have no objection to this proposal, that is, deleting section 14(9)(c). But the Bill has proposed that "subsection (3)" in section 14(9)(c) be amended to "subsection (4)", which shows that the Government has considered that section 14(9)(c) is necessary. Given that, this amendment is somewhat self-contradictory.

Although the amendment does not propose any substantive amendment to section 14(9)(b), we must point out that the drafting of the Chinese text of section 14(9)(b) is utterly incomprehensible to the readers. There are 49 Chinese characters in that provision without any punctuation mark in between, that is, the first sentence of the provision already contains 49 characters. Let me try to cite the provision as follows, "凡某資料使用者屬於在正生效的2份或2份以上的第(1)款下的公告中指明的2個或2個以上的資料使用者類別" (where a data user belongs to 2 or more classes of data users specified in 2 or more notices under subsection (1) which are in force). Chairman, can you understand what I am saying? I actually speak quite fluently. Let me read it again, "凡某資料使用者屬於在正生效的2份或2份以上的第(1)款下的公告中指明的2個或2個以上的資料使用者類別". Mr LAU Kong-wah, do you understand? Really? That is amazing. Perhaps you should talk about it later. It is amazing that you can understand what I am saying. I must tell Members that if the Chinese text is drafted in such a way, there is no way any person can understand the meaning without referring to the English text. Let me repeat once again that the Chinese text of the draft legislation is really "shit". What can we do if people who are regulated by the law cannot understand clearly what the law is about?

There is another sentence with 47 characters. I reckon a person with asthma can never read it as fluently as I do. I used to test my students by asking them to read sentences with over 50 characters without any punctuation mark. It is quite easy to find the materials because any public notice in Mainland China will do, just any public notice issued by the Chinese Communist Party in the Mainland will do. Some sentences contain up to 62 characters without any punctuation mark, which is quite terrible. One can easily get out of breath when reading those sentences. This provision — section 14(9)(b) — goes on as follows, "則就本條而言，該資料使用者須當作屬於在憲報刊登的該等公告之中的第一份所指明的資料使用者類別" (then, for the purposes of

this section, that data user shall be deemed to belong only to that class of data users specified in the first of those notices to be published in the Gazette). The first sentence contains 49 characters. The Chinese text always comes after the English text. That is the usual practice of law drafting as the English text is always drafted first, to be followed by translating it artificially into the Chinese text. Legal provisions should be drafted clearly and concisely. Given that the Hong Kong Government is so wealthy and the law drafting officers in the Department of Justice are paid such a high monthly salary, how come the standard of Chinese is so deplorable that the laws are practically incomprehensible to the readers?

The Report of the Select Committee on the West Kowloon Reclamation Concept Plan Competition and related issues has been released. So we can talk about it. In the Report, the phrase "掉以輕心" (did not accord sufficient attention) has been used — meaning LEUNG Chun-ying did not accord sufficient attention to making his declaration. Some members considered that this Chinese phrase was a severe term to use because the literal meaning in Chinese is that one's heart has been lost. Our counter-argument was that this Chinese phrase was merely a description meaning that he had treated the matter in a light-hearted and casual manner. Yet some members still considered that the criticism was quite severe. We then had a long argument over the issue, that is, the Subcommittee expressed dismay at the fact that he had not accorded sufficient attention to handling the matter. When the issue was put to vote eventually, it was only won by a margin of one vote. I went on to explain that this Chinese phrase only referred to his attitude in handling the matter, and this Chinese phrase was only a mild expression ……

CHAIRMAN (in Cantonese): Mr WONG, please confine your speech to the relevant provisions.

MR WONG YUK-MAN (in Cantonese): I will eventually go back to the provisions under discussion now. This Chinese phrase came from LIU Zongyuan who said, "Whenever I write an article, I never treat it in a light-hearted manner." That is the origin of this Chinese phrase. As we can see, such protracted argument has taken place at the Select Committee on the Chinese version of the draft Report. For us who consider ourselves quite good

in Chinese, we can claim to be "experts". But in fact, I may be wrong at times and other Members may have been misled. It is clear as to how bad the situation can be, and there are many examples around. I have not joined the Bills Committee responsible for examining the amendment Bill. Had I joined the Bills Committee, I would definitely point out that those 49 characters are simply incomprehensible no matter how they are read. Those phrases, subjects and predicates are all in a mess, such that persons who can read Chinese still fail to understand the meaning, which is very amazing indeed. I know all those characters, yet I cannot explain the meaning. Now, I understand the reason. Like all of us, JIN Yong also uses the 2 000-odd most common Chinese characters, yet he is able to write those martial arts novels. For some other people who also know those 2 000-odd most common Chinese characters, they cannot even speak fluently, let alone write fluently; they can only write incomprehensible sentences filled with wrongly written characters. Nobody can understand the contents of these provisions without referring to the English text.

Moreover, I wish to spend some time on talking about clause 8 of the Bill. We agree to the proposal of adding section 14A to the Personal Data (Privacy) Ordinance (PDPO). Actually, many of the amendments proposed by the Government are acceptable. I do not know the views of Mr James TO, but when it comes to clause 21, we will definitely support his amendments. I will talk about it later if we have time to proceed with the discussion of that provision today. Insofar as the current progress is concerned, I think it is likely because nobody wishes to speak again except me who is still speaking, albeit breathlessly. They are all experts in the PDPO, yet nobody speaks. That is the truth about the Legislative Council. How come they can criticize us shamelessly for causing the Council meeting to be adjourned due to the absence of a quorum as a result of our filibustering? Have they diligently performed the duties of a Member of the Legislative Council?

CHAIRMAN (in Cantonese): Mr WONG, you have already repeated your views many times. Please speak on the relevant clauses.

MR WONG YUK-MAN (in Cantonese): I must of course remind other people repeatedly. My old man would often teach me through repeated advice and instructions. When I have done something wrong, he would often mentioned

repeatedly. So what is wrong with repetitions? I am compelled to give this "solo performance" here. I have a pile of reference materials with me here, which facilitate me to speak for a very long time. Anyway, I am fighting this battle of "long-windedness". The amendment to section 14A(1) proposes to add the word "reasonably" in the provision so that it reads as follows, "the Commissioner may, by written notice served on any of the persons specified in subsection (2), reasonably require the person". The amendments also propose to add the element of "reasonable" to sections 14A(4) and 14A(5), such that the Commissioner is required to give consideration to the element of "reasonable" (合理性) — I really hate the use of the Chinese word "性" — when exercising his powers under section 14A. Section 14A(4) is about whether the Commissioner has "reasonable grounds" to query the accuracy of a data user return, while section 14A(5) requires the Commissioner to allow a "reasonable period" for compliance with the relevant requirements of the Commissioner. By adding the element of "reasonable", the requirements have become "reasonably", "reasonable grounds", "reasonable period", which are all reasonable. Yet there is no definition of "reasonable" in the amendments, just the use of the term in various places, such as "reasonably require the person", "reasonably require", "reasonable grounds", and "reasonable period". The amendments have neither provided a definition for the term "reasonable", nor set out the factors for determining whether the requirement made by the Commissioner under section 14A(1) is reasonable or otherwise. Those are the factors which should be considered by the Commissioner as well as the Court, yet they are not mentioned in section 14A(1).

Under the original proposal in the Bill concerning section 14A, the Commissioner can make certain subjective judgment on the relevant issues, and with the present amendments, the so-called objective standard is adopted. Besides, the scope of sections 14A(1) and 14A(2) has also been expanded to cover the so-called change notices of data user returns, so that the Commissioner can have more comprehensive powers to require the provision of information for the verification of data user returns. It is reasonable to include change notices in section 14A, and the amendment is generally accepted because under the original provision, the Commissioner is only conferred with the power to verify data user returns. In case data users serve the so-called "change notices" of data user returns, the Commissioner does not have the power to verify such information. Hence, it will create a so-called "grey area" in the legislation.

Regarding the offence and penalty under section 14A, I have already mentioned the same during the previous discussion on clause 3. Therefore, I will not repeat my views here. In addition, clause 9 of the Bill proposes to add sections 15(4A) and 15(7). I must reiterate the point which I have just said, namely that in our view, there is something wrong with the thresholds of "knowingly" and "recklessly" for an offence under section 14(11). We consider that as data users have the responsibility of verifying the material particulars provided under sections 15(3), (4) and (7), a relatively lower threshold should be adopted.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr WONG Yuk-man, speaking for the fourth time.

MR WONG YUK-MAN (in Cantonese): Is a quorum present now?

I also wish to discuss clauses 11 and 13 because I am well-prepared. The clauses under scrutiny now include clauses 11, 13, 24, 27, 28 and 32, as well as clauses 36, 38 and 39. Please be patient. It is all right if the clauses in the latter group are left undiscussed.

Clause 11 of the Bill seeks to amend section 18 on data access request by adding subsections (5) and (6). In fact, the new subsections (5) and (6) have plugged the loopholes of section 18. The relevant amendment provides that if a person supplies any information which is false or misleading for the purpose of affecting the data access request made to the relevant data user, that person commits an offence. In addition, the amendment provides that the penalty for such an offence is the same as that under section 14A mentioned earlier. In principle, we support this amendment, as well as the relevant amendments to improve drafting.

A point worth noting is that two very important concepts in the relevant offence under section 14A, namely "knowingly" and "recklessly", are missing in the new subsections (5) and (6). In other words, there is no such requirement under subsections (5) and (6). Indeed, we do not understand the reason and hope the Secretary can give us an explanation in his reply later as to why the new subsections (5) and (6) do not contain the legal requirements of "knowingly" and

"recklessly" as specified in the relevant offence under section 14A. What is the rationale for the different arrangements? I hope the Secretary can give us an explanation later.

In addition, clause 13 seeks to amend section 20(1)(c) and add section 20(3)(ea). Under the proposal, the expression (and I quote) "or any other" is inserted between "under this" and "Ordinance" in section 20(1)(c). I share Mr James TO's view, that is, the Government should specify what is meant by "other Ordinance" exactly. The Government must tell us clearly what is meant by "other Ordinance".

It has been pointed out in paragraph 44 of the Report of the Bills Committee that, "The Administration considers it impracticable to specify all ordinances under which compliance with a data access request is prohibited or refusal to comply with a data access request is allowed." Hence, it is clear that when the Government proposed to add the words "or any other", no comprehensive review of the relevant requirements under different legislation had been conducted. The Government has just cited the Inland Revenue Ordinance and the Sex Discrimination Ordinance as examples. But we consider that it is not sufficient. It is irresponsible for the Government to refuse specifying what is meant by "other Ordinance", or to adopt a more flexible approach such as by means of a schedule.

We agree and support adding section 20(5) to empower a court, a magistrate and even the Administrative Appeals Board to inspect the relevant data before deciding whether a data user must comply with a data access request under section 18. We consider that under certain circumstances, it can be quite difficult to decide whether an exemption should be granted without understanding the contents of the data. As only magistrates, courts and the Administrative Appeals Board are empowered under section 20(5) to inspect the data and adequate safeguard has been provided under section 20(5)(b) to prevent abuse, the new section 20(5) is appropriate. The above is some of my views on the amendments under clause 13.

Chairman, I request a headcount. A quorum is not present.

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

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

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, do you wish to continue with your speech?

MR WONG YUK-MAN (in Cantonese): Chairman, regarding clauses 11 and 13 I just mentioned, I indeed have some questions which I hope the Secretary can reply to later. In case the Secretary has not listened to my speech carefully just now, sections 11(5) and 11(6) do not contain the legal requirements of "knowingly" and "recklessly" as specified in the relevant offence under section 14A. This difference in treatment is questionable and we hope the Secretary can give us an explanation later. Next, we will deal with Mr James TO's amendments. I will stop for now. Thank you, Chairman.

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

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, first of all, I have to report to you that today marks the third week of mourning for Mr LI Wangyang's death. I wish his family members safe and sound, and I hope we can all keep on struggling for his rights. That is what I have to report. You can read the message on my clothes.

Let me go back to the Personal Data (Privacy) Ordinance (PDPO). It goes without saying that the PDPO is a legislation enacted as a result of Hong Kong people's concern for privacy. Hence, many provisions under the PDPO are controversial. First of all, in respect of amending the PDPO, the Government and the Office of the Privacy Commissioner for Personal Data (PCPD) have been deeply divided. There is no arrangement for retrospective effect under the newly-amended Ordinance, which is somewhat related to what Mr WONG Yuk-man has said just now. Moreover, this can also be seen from the provisions under section 14A "Verification of data user returns". In terms of legislative

intent, data users are in fact those to be targeted because it is very difficult for data subjects to use those data.

What is the requirement under section 14A? The requirement is that, "For the purpose of verifying the accuracy of information in a data user return submitted under section 14, the Commissioner may, by written notice, require any of the persons specified in subsection (2) ……", while the persons specified in subsection (2) are "the data user" or "any other person whom the Commissioner has reasonable grounds to believe may be able to assist in verifying any information in the data user return".

The meaning of "the data user" is clear, that is, those persons who may sell the data or buy the same for use. However, it is questionable as to the exact meaning of "any other person whom the Commissioner has reasonable grounds to believe may ……" — "may" also has the meaning of "perhaps" — "…… be able to assist in verifying any information in the data user return". Hence, I think the provision in relation to the relevant persons in section 14A(2)(b) of the Ordinance is highly questionable. What is meant by persons who are able "to assist in verifying any information in the data user return"? Does it mean those who have obtained the data inadvertently, or those who have provided the information to a certain person and asked him to use the same? Hence, this has in fact created uncertainty in relation to the requirement under section 14A(1). Of course ……

CHAIRMAN (in Cantonese): Mr LEUNG, I must point out that you should have raised this kind of questions in the course of the Bills Committee's scrutiny of the clauses of the Bill. As I have said previously, it is not our established practice to have each and every clause examined in detail at the Committee stage. Hence, at this moment, please do not repeat the questions which should have been discussed at the Bills Committee. Please speak concisely.

MR LEUNG KWOK-HUNG (in Cantonese): I see. In that case, I will stop talking about that question. What I wish to say just now is that there is no arrangement for retrospective effect under the newly-amended Ordinance, which means that data transferred for marketing purpose before the commencement date of the amended Ordinance is not subject to its regulation. That is the question I have raised during the resumption of Second Reading debate of the Bill.

The PCPD proposed the introduction of a cut-off date. That is the view of the PCPD. When the incumbent Privacy Commissioner for Personal Data (the Commissioner) was appointed, I have pointed out that his appointment was a mistake, but his performance in this case is not bad at all. Yet he was wrong to agree with the PCPD's proposal to introduce a cut-off date, which means that the new statutory requirements will only come into operation nine months after the following day of the enactment of the Ordinance. As I have said during the resumption of Second Reading debate, there is no reason why after the passage of Bill …… It should not have an arrangement for retrospective effect ……

CHAIRMAN (in Cantonese): Please do not repeat the points you have already covered during the resumption of Second Reading debate. Please confine your speech to the details of the clauses currently displayed on the monitor.

MR LEUNG KWOK-HUNG (in Cantonese): Yes. I wish to speak on proposed section 14A, but I was stopped by you. I have only prepared to speak on that provision. Let me see. Please wait a moment. I am sorry.

CHAIRMAN (in Cantonese): As proposed section 14A is under clause 8 of the Bill, it falls within the scope of our current discussion. Hence, you can speak on that section. But please do not repeat the points you have already spoken about.

MR LEUNG KWOK-HUNG (in Cantonese): I see. In that case, I might as well not talk about that section which is so controversial. Let me talk about clause 4 …… Chairman, clause 4 seems to be on the list, right? Yes, I have seen it.

Clause 4 of the Bill seeks to amend section 8 "Functions and powers of Commissioner". Chairman, I only refer to the Blue Bill now. First of all, the Government proposes to repeal "computer" and substitute with "information" in section 8(1)(f). As I think this is a good suggestion, I support it. It is because the term "computer" …… Let me see the English text of the Bill …… The term "computer" is not exactly accurate, and "information" is a more accurate term to use. Of course, a large amount of information can be stored on the computer,

and such information can be rapidly transferred to various places in the world through the computer to enable "point-to-point", "point-to-multipoint" or "multipoint-to-point" information exchanges. However, "information" is a more accurate term to use because regardless of whether a computer is used or not, even a written note or an oral exchange is covered. Therefore, I agree that this term should be used.

Regarding the proposal to add "and provide assistance to" after "co-operate with" in sections 8(1)(g)(i) and (ii), I also think that it is proper because the phrase "co-operate with" implies that two persons already know beforehand that they are working together on something with division of work, whereas the phrase "and provide assistance to" does not necessarily have the same meaning. Hence, if only the phrase "co-operate with" is used, a problem will arise, and that is, how to prove that two persons are "co-operating with" each other? It means a relatively heavy burden of proof. In fact, that is also one of the factors involved in my case. I was sentenced to imprisonment because I was charged for acts of a conspirator or accomplice. In case of people co-operating with each other, there must be proof that those people have made planning together with division of work, and they know their respective responsibilities.

However, the phrase "provide assistance to" is different as the person being assisted is not required to say anything to the other party beforehand. I can give a very simple example. If we co-operate with each other to reveal the unauthorized building works at LEUNG Chun-ying's mansion on the Peak, we will have to have division of work. I will tell "Yuk-man" to check the title deed of the mansion and I check the aerial photographs. In that case, we co-operate with each other on this matter. However, it is different in the case of "provide assistance to". For instance, someone posts information on my website and tells me that the place where LEUNG Chun-ying lives was originally a clubhouse, or that the main gate of his mansion is now used to separate the facilities in the former clubhouse so as to prevent other people from using such facilities. In that case, the phrase "provide assistance to" does not necessarily carry the meaning of "co-operating with". If the legislation is drafted in such a way as to simply imply the meaning of "co-operating with", it will become an easy target for those who deliberately make use of loopholes in law. How can the Administration prove that people "co-operate with" each other? Hence, I think this is a suitable revision.

The third point is to add, after section 8(2)(e), "carry out promotional or educational activities or services; and", and to add "The Commissioner may impose reasonable charges for any promotional or educational activities or services carried out, or any promotional or educational publications or materials made available, by the Commissioner in the course of the performance of the Commissioner's functions under this Ordinance." I think these two provisions are proper because the Commissioner can then confer reasonable rights to any person who does not sell or make profit out of other people's personal information he obtained to carry out activities not intended to be prohibited by the legislation after obtaining such information or assistance from other people, that is, promotional or educational activities or services, or the Commissioner can have the legal basis to allow such activities on the condition of recovering the relevant costs for any promotional or educational publications or materials made available.

On account of the above reasons, I think this amendment is in line with my expectation. Hence, I state here my support for this amendment.

Chairman, that is what I want to say for the time being.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr WONG Yuk-man, speaking for the fifth time.

MR WONG YUK-MAN (in Cantonese): The amendments proposed by the Government under clause 27 seek to amend the part in relation to repeated contravention of enforcement notices. Under the Bill, the new section 50A targets different acts relating to repeated contravention of enforcement notices.

Firstly, on a first conviction, an offender is liable to a daily penalty of $1,000 if the offence continues after the conviction — this is the provision under section 50A(1)(a). Secondly, on a second or subsequent conviction, an offender is liable to a daily penalty of $2,000 if the offence continues after the conviction — this is the provision under section 50A(1)(b). Thirdly, if a data user who has complied with an enforcement notice contravenes the requirement as specified in the enforcement notice under the new section 50(1A)(b) again, he is liable to a daily penalty of $1,000 if the offence continues after the conviction — this is the provision under section 50A(3).

In principle, we support adding these provisions to target the so-called continuous contravention of the Ordinance. However, we consider that the maximum daily penalty is too lenient. For some data users, the penalty is merely regarded as part of their operating costs. Very often, offenders who contravene certain statutory requirements are merely subject to a fine which they will regard as part of their operating costs. For instance, notwithstanding repeated prosecutions made by the Food and Environmental Hygiene Department (FEHD) against certain Hong Kong style tea cafes for putting chairs and tables on the street, the operators have already factored the expected penalties such as deduction of points and payment of fines into their operating costs. In that case, they will not be deterred at all.

Hence, the FEHD has devised an ingenious measure to target hawkers, that is, to revoke their licences. As the FEHD is aware that no deterrent effect can be achieved by imposing a fine, the ultimate punishment of licence revocation is adopted. Of course, we cannot make a direct comparison between the two situations because for the Bill relating to privacy under discussion now, certain protection must be provided to some relevant persons.

Hence, if a data user repeatedly and continuously contravenes the Ordinance, the penalty should not be too lenient. This is common sense. Otherwise, they will have no fear at all. Moreover, we must not forget that the data users now all possess substantial financial resources as many of them are large organizations. An ordinary citizen will not always make use of other people's data unless he is crazy or he is a criminal. The present problem is that many large organizations can do a lot of things with our personal data, which will incur losses on our part. But they are only required to face these penalties. What is the use of it? Hence, as such lenient penalties are imposed and data users will definitely regard the fines as part of their operating costs, no deterrent effect can be achieved at all.

If any deterrent effect is to be achieved, the penalty for repeated contraventions of enforcement notices should be increased and the Government should even consider increasing the maximum term of imprisonment; otherwise, what deterrent effect can be achieved? What is the use of imposing a daily fine of $1,000 or $2,000?

Besides, under the Bill, the serving of enforcement notices is no longer subject to the condition that the contraventions in the circumstances will likely continue or be repeated …… Sometimes, I have absolutely no idea what is meant by expressions such as "the contraventions in the circumstances", but I will of course try to ascertain the meaning. Under the Bill, the serving of enforcement notices is no longer subject to the condition I just mentioned. Specifically, the condition is that the contraventions in the circumstances will likely continue or be repeated. By abolishing this condition specifically, the Bill can impose relatively heavier pressures on data users and increase the power of the Privacy Commissioner for Personal Data against acts of contraventions.

Besides ……

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

MR LEUNG KWOK-HUNG (in Cantonese): According to Rule 17(3) of the Rules of Procedure, if the attention of the Chairman in committee of the whole Council is drawn to the fact that a quorum is not present, he shall direct the Members to be summoned.

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

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

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): Chairman, regarding the Government's proposed amendments under clause 27 I just mentioned, we consider that continuous contraventions of the Ordinance should be severely punished. The penalties stipulated in the present amendments are too lenient. In fact, we agree that the Privacy Commissioner for Personal Data (PCPD) should be given the

power to direct data users to take necessary steps to prevent recurrence of contravention. Under the amendment, the PCPD is empowered to direct data users to take necessary steps to prevent recurrence of contravention.

Without this amendment, many data users may have the misunderstanding that in case of contravention, they only need to make a change temporarily, and they can contravene the Ordinance again after completion of the procedure. That will be their interpretation without this provision. As pointed out by the Office of the Privacy Commissioner for Personal Data (Office of PCPD), in the amendment proposed under clause 27(1) to section 50(1A)(b)(ii), the PCPD is still required to specify the act or omission that constitutes the contravention. This will tighten the PCPD's power because non-compliance often occurs as a result of inadequacies in the data users' policies, measures or procedures, which do not involve any so-called act or omission. Hence, an enforcement notice cannot be served if the act or omission that constitutes the contravention cannot be specified.

All in all, the Government's attitude is evident from the entire amendment. Ultimately, it refuses to face the reality or accept the views of the Office of PCPD or the PCPD. The Office of PCPD has made many recommendations in the hope of perfecting the Bill. For instance, we are aware that such recommendations are related to the mechanism of allowing the individuals to be informed of the source of personal data, the cut-off date for the grandfathering arrangement, and so on. Though it may sound *cliche*, these recommendations are all very "constructive". The question is that the Government has all along refused to accept these very constructive and practical recommendations by claiming repeatedly that as the existing Bill has already provided adequate protection for data subjects, there is no problem at all.

Regarding these amendments, we of course consider that many of them can improve the system. But we also note the Government's unwillingness to plug all the loopholes once and for all, perhaps for fear of the enforcement difficulties involved. In my view, the Government practically does not intend to perfect the legislation, or to plug the loopholes in the relevant Ordinance structurally.

Honestly, this legislative amendment exercise will not be conducted without the Octopus incident. Hence, it is our hope that the Government will also spend time reviewing the enforcement of the legislation after these

amendments have been passed. Of course, many of these amendments, namely clauses 1, 3, 4, 7, 8, 9, 11, 13, 24, 27 …… and the remaining ones, are in fact acceptable. After all, the question is that the Government must show us that it will consider expanding the powers of the Office of PCPD in future in terms of enforcing the relevant Ordinance. After all, if the Government does not confer enough powers to the Office of PCPD, the Ordinance is merely a legislation in form and will only have limited deterrent effect on the offenders. Thank you, Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Chairman, first, I have to thank Members who have spoken a number of times just now for expressing their views.

I will first respond to Mr James TO about the addition of new section 14A to the Personal Data (Privacy) Ordinance (PDPO) proposed under clause 8 of the Bill. I would like to first talk about the content of section 14A. It is stipulated in section 14 of the PDPO that data users are required to submit a return to the Privacy Commissioner for Personal Data (PCPD) setting out the prescribed information specified in Schedule 3 to the PDPO. The proposed new section 14A provides additional power for the PCPD to require a person to provide any document, record, information or article, or to answer any questions of the PCPD, in order to assist the PCPD in verifying the accuracy of the information in a data user return. This is quite an enormous power, for the PCPD may request for the provision of any document and record, and it is a criminal offence if the person refuses to fulfil the request of the PCPD.

However, we notice that the secrecy provisions in other ordinances prohibit the persons concerned from providing the document, record, information and so on to the PCPD. I wish to point out that in the enactment of these ordinances, all relevant factors have been considered, and these secrecy provisions will not put an absolute ban on disclosure of information but invariably allow disclosure

under specified circumstances. As for the room for disclosure, decision is made in consideration of the policy objectives of individual ordinances and the issues involved.

The secrecy provisions in individual ordinances also reflect the outcome of a balancing exercise in respect of different policy considerations. These provisions have been subject to careful scrutiny before enactment. Therefore, we do not consider it appropriate for PCPD's power to obtain information under the proposed new section 14A to override the secrecy provisions in other ordinances. Moreover, we consider it impracticable to specify in the PDPO all ordinances under which a person is entitled or obliged to refuse to provide documents required by the PCPD. In our view, it would be more appropriate to set out the general rule in the PDPO that PCPD's additional power under the proposed new section 14A should be subject to the secrecy provisions in other ordinances.

I will then respond to Ms Cyd HO's concern about clause 24 of the Bill. Clause 24, which seeks to amend section 46 of the PDPO, is about the co-operation of the PCPD and counterparts in places outside Hong Kong. We understand the concerns of Ms Cyd HO. Indeed, during the scrutiny of the relevant provisions in the Bills Committee, some Members have expressed concerns that if the PCPD may disclose the information he has obtained when performing his duties to authorities outside Hong Kong, it may inflict damage on the protection of the data subject. We understand the concerns of Members, and we have thus put forth some amendments. In the course of scrutiny in the Bills Committee, some Members asked about this issue, and so did Ms Cyd HO earlier. According to the present proposal of the Government, one of the conditions is that the authorities outside Hong Kong must accept the secrecy requirements imposed by the PCPD. However, what actions should be taken if the counterparts do not comply with the requirements. As I explained in the Bills Committee, under our present proposal, the PCPD may only disclose information or matters to authorities outside Hong Kong provided that legislation similar to the PDPO is in force in those places. Regarding the legislation in other places, more often than not, secrecy requirements similar to those imposed on the PCPD under the PDPO have also been in place, and it is a criminal offence if the authorities of those places fail to comply with the relevant secrecy requirements.

Certainly, as pointed out by Ms Cyd HO earlier, Members may still worry about the stringency of the legislation in other places. I have conveyed the worries of Members to the PCPD. The PCPD has pointed out to me that in addition to the protection under the relevant legislation, when the PCPD exercises his power under the proposed new sections 46(7) to 46(9), he is not required to disclose the information according to the request of his counterparts. He will consider all the relevant factors before exercising discretion on whether or not the matters should be disclosed. Hence, he will fulfil his gate-keeping role faithfully.

Regarding Ms HO's proposal of setting out the authorities of places which the PCPD has disclosed information in the annual report of the PCPD, we have conveyed this proposal to the PCPD and we will do it once again. I believe it is because Ms HO is particularly concerned about this issue that she has brought it up again today.

Now, I would like to respond to Mr WONG Yuk-man's concern about the commencement date which he mentioned when he spoke for the first time. This is related to clause 1 of the Bill. We have put forth an amendment to the commencement date, proposing that provisions relating to direct marketing should come into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette. As I mentioned in my speech at the Second Reading, to enable the provisions relating to direct marketing to come into effect, a lot of preparation work has to be done by the PCPD beforehand, including to consult the relevant sectors in formulating detailed guidance notes and implement education and promotion work such as organizing workshops for various sectors to facilitate their understanding of and compliance with the new requirements.

We know Members hope that the relevant provisions can be implemented as soon as possible. However, as I mentioned in my speech at the Second Reading, the PCPD initially asked for more time for preparation. I have conveyed to the PCPD Members' wish for the early implementation of the relevant provisions. Hence, I said at the Second Reading that our present target was for the relevant provisions to come into effect around nine months after the enactment of the Bill. Moreover, Mr WONG Yuk-man is concerned about the grandfathering arrangement (or the exemption arrangement as I called it). This

is related to clause 21 of the Bill, which will be debated in the next group of amendments. Perhaps I will give my detailed response later.

Ms Cyd HO expressed her concern about clause 34 of the Bill when she spoke for the second time. Clause 34 adds new section 63D to the PDPO to provide for an exemption for records transferred to the Government Records Service. As Ms Ho said, she considers the wordings of the Blue Bill "offensive". After discussion with Ms HO, we both agree that improvement can be made to the wordings. Today, we have put forth an amendment to this effect and I hope Members will support this later.

Regarding Ms HO's proposal for the enactment of archival law, as Ms HO said that persons concerned about the issue had already communicated with the Chief Executive-elect, I believe this issue should be left to the next-term Government to follow up.

Mr Albert CHAN mentioned clause 8 of the Bill when he spoke for the first time. Clause 8 of the Bill proposes the addition of new section 14A to the PDPO. Section 14A(5A) is related to offences, and the penalty is a fine at level 3. Mr Albert CHAN considers the penalty too light and that the provision seems only applicable to civil servants. First, I would like to point out that in setting the penalty, consideration has been given to the penalties imposed on other offences under the existing PDPO, hoping that it will be consistent with the severity of various penalties. It is out of this consideration that we propose to set the penalty at a fine at level 3.

For the applicability of the provision, section 14A is about the data user return scheme which has not yet been implemented for the time being. Some time ago, the PCPD conducted consultation on the proposal of first applying the scheme to three industries, namely the telecommunications, banking and insurance, as well as the public sector which includes government departments. It is evident that upon the implementation of the data user return scheme, the scope of application will not be limited to civil servants but will also cover the business sector.

Mr WONG Yuk-man asked in his following speech about the present amendment on the addition of subclause (1A) before subclause (1) in clause 3 of the Bill. He asked why subclause (1A) was added before but not after

subclause (1) as we often did. It is because the wording to be amended under the newly-added subclause (1A) comes before the wording to be amended under subclause (1) in the existing PDPO, so subclause (1A) has to be put before subclause (1).

Regarding the repeal of paragraph (c) under "relevant person" of section 2(1) of the PDPO, Mr WONG Yuk-man considers the repeal unnecessary. He is correct, and we also think that the repeal is unnecessary. We only move this paragraph to another place in the Ordinance, making it the new section 17A under the PDPO.

Mr WONG Yuk-man then asked about the proposal of the addition of subsection (2A) to section 8 of the PDPO, which is mainly related to PCPD's imposing changes for promotional and educational activities. Regarding Mr WONG's query about the need for the PCPD to charge for promotional and educational activities, we have explained it in detail during the discussion in the Bills Committee, and the PCPD has also submitted papers to explain this. The reason is that at present, the PCPD conducts a wide range of promotional and educational activities, publications and services in performing his duties. When these activities are targeted at the general public, the products or services provided by the PCPD are free, for they aim at raising the awareness and understanding of the public on the provisions of the PDPO. When the products or services are targeted at specific sectors, the PCPD will charge a fee based on the cost recovery principle. For in the past, associations in various sectors will seek assistance from the PCPD in providing certain customized activities, such as seminars or workshops, on the requirements of the PDPO. The PCPD considers that under such circumstances, where the service is customized for a certain sector, charges should be imposed on the basis of the cost recovery principle.

As for Mr WONG Yuk-man's query about not amending section 8 (Functions and powers of Commissioner) of the PDPO to empower the PCPD to conduct criminal investigation and prosecution, I have given a response at the Second Reading, so I will not repeat it here.

I will next respond to the remarks of Ms Cyd HO. Ms HO mentioned clause 36 of the Bill, which is about the addition of new section 64A concerning miscellaneous offences. Ms HO mentioned earlier that the drafting of the original Blue Bill was difficult to read, for a large number of provisions are set out in the clause. We have reorganized these provisions in the amendment and

some improvement has been made. I notice that Ms HO welcomed in her speech the addition of new section 64A in amending the defence provision. She also expressed concern about the public consultation carried out on anti-stalking law some time ago. I would like to respond briefly to this. During the public consultation, we understood that many people or the media had expressed concerns about the definitions of the relevant offences, defences and exemptions under the anti-stalking law. We will consider the views expressed carefully. An internal report will be drafted for reference of the next-term Government, so that it may decide on the next step. I would like to reiterate that we well understand and will fully consider the concerns of the public about the possible impact of enacting legislation to regulate stalking behaviour on the media or freedom of expression.

Mr WONG Yuk-man then mentioned the proposed addition of new section 14A to the PDPO under the Bill. The present amendment includes the element of "reasonable" in certain places, which is mainly based on the proposals of the Hong Kong Association of Banks. Having made reference to other ordinances, we consider that the PCPD should be reasonable in exercising his authority under the law. For this reason, we have briefed the Bills Committee about the proposed amendment and secured its support.

Mr WONG Yuk-man made repeated requests for me to respond to clause 11 of the Bill in my reply, that is, the amendment to section 18 of the PDPO by adding subsections (5) and (6). His concern is about the elements of "knowingly" or "recklessly". These two elements are present in other provisions on offences but not in the new subsections (5) and (6) added to section 18 of the PDPO. First, I would like to point out that the offence in the newly-added subsections (5) and (6) under section 18 is not a new offence but an existing one. It is only moved to this position in the Ordinance. If any person supplies false or misleading information for the purpose of making a data user comply with a data access request or data correction request, he commits an offence. Since it is stated in the provision the purpose of making a data user comply with a request, which means the element of criminal intent is included, it is unnecessary to add the word "knowingly" or "recklessly".

I have heard the views expressed by Mr LEUNG Kwok-hung earlier on various clauses. As he in general supports or agrees to them, I will not again respond in detail here.

Regarding the amendment to section 50 of the PDPC under clause 27 of the Bill, Mr WONG Yuk-man expressed his views about the enforcement notice. When he spoke halfway, he jumped to the discussion of the proposed new section 50A to be added to the PDPO. He mentioned the two amendments. However, Chairman, I would like to point out that the proposed new section 50A is not in this group of amendments. Actually, section 50A was added on Monday. However, the view expressed by Mr WONG on section 50 belongs to this group, so I should respond to it. Regarding the proposed amendment "prevent any recurrence of", Mr WONG Yuk-man expressed his support. And, he considered that the Government had seemingly not heeded the advice of the PCPD. I wish to point out that the amendment we propose to section 50 is indeed made according to the recommendations put forth by the PCPD earlier. As for the individual wording in the provision, the PCPD wished to keep them. Yet, having examined the provision, we consider the proposed amended wording has already included the original meanings. However, due to the concern of the PCPD, we propose to add "prevent any recurrence of", as mentioned by Mr WONG earlier, to the provision after discussing with the PCPD. Now, the PCPD is satisfied with the amendment we propose, and we thus put forth the amendment this time around.

Chairman, I have responded in detail to remarks made by various Members earlier. I hope Members will support the amendments proposed by the Administration. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Constitutional and Mainland Affairs 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)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for five minutes.

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.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM and Mr Alan LEONG voted for the amendments.

Mr LEUNG Kwok-hung and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 45 Members present, 42 were in favour of the amendments and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CHAIRMAN (in Cantonese): Before I put the question to you on the clauses as amended standing part of the Bill, I have to explain to Members that since Mr Albert CHAN requested that clause 8 be dealt with separately in his earlier speech, though he is not in the Chamber now, I will accede to his request by first dealing with clauses other than clause 8, to be followed by clause 8.

CLERK (in Cantonese): Clauses 1, 3, 4, 7, 9, 11, 13, 24, 27, 28, 32 to 36, 38 and 39 as amended.

CHAIRMAN (in Cantonese): I now put the question you and that is: That the clauses as amended and read out just now 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)

Mr LEUNG Kwok-hung rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 47 Members present and 46 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clause 8 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 8 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)

Mr LEUNG Kwok-hung rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Cyd HO, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Ms Emily LAU, Mr KAM Nai-wai, Mr WONG Sing-chi and Mr LEUNG Kwok-hung abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 48 Members present, 39 were in favour of the motion and eight abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clause 21.

CHAIRMAN (in Cantonese): The Secretary for Constitutional and Mainland Affairs has given notice to move amendment to clause 21. Mr James TO has also given notice to move five amendments to clause 21.

The Committee will first put to vote the Secretary's amendment. If the Secretary's amendment is passed, Mr James TO may not move his amendments. If the Secretary's amendment is negatived, Mr James TO may move his first amendment, and if any one of Mr James TO's amendments is passed, he may not move his remaining amendments.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original clause 21 and the six aforesaid amendments. I will first call upon the Secretary for Constitutional and Mainland Affairs to speak and move his amendment, to be followed by Mr James TO, but he may not move his amendments at this stage.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Chairman, I move the amendment to clause 21 of the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill). We propose deleting the proposed Part VIA to be added to the Personal Data (Privacy) Ordinance (PDPO) under clause 21 of the Bill and substituting it with new Part VIA.

Clause 21 of the Bill introduces new regulation to the sale of personal data and the use of personal data in direct marketing. I will first introduce briefly the original proposed regulatory requirements under the Bill.

First, in direct marketing, the Bill provides that a data user intending to use or provide the personal data of a data subject to others for use in direct marketing should inform the data subject in writing. The written information should state the kinds of personal data to be used or provided, the classes of persons to which the data is to be used or provided, and the classes of goods, facilities or services to be offered or advertised of the availability; or the purposes of the solicitation of donations or contributions. A data user should also provide a response facility

allowing a data subject to indicate whether or not he objects to such use or provision.

If a data subject gives a written reply to a data user to indicate no objection, the data user may use the data for direct marketing or provide the data for use of direct marketing. If a data subject does not send his objection in a written reply within 30 days, the data subject will be taken not to object. The "taken not to object if no reply sent within 30 days arrangement" is proposed mainly to cater for situations where the data user did not intend to use or provide the data subject's personal data to others for use in direct marketing at the time of data collection but intends to do so afterwards.

It is also proposed in the Bill that irrespective of whether a data subject has sent a written reply to a data user to indicate no objection within the 30-day response period, the data subject may subsequently at any time indicate in writing the objection to the use or provision of his personal data to others for use in direct marketing. The data user must immediately cease the use or provision of such data to others for use in direct marketing. The data subject may also send a written request to the data user to inform persons to whom his personal data has been provided for use in direct marketing to cease using such data for such purpose. Upon the receipt of such notification, the person to whom the data is provided must cease using such data for such purpose.

In respect of the sale of personal data, specific requirements have also been introduced under the Bill. Data users intending to sell personal data must provide written information to data subjects before the sale, stating the kinds of personal data to be sold and the classes of persons to which the data is to be sold. Data users should also provide a reply facility to allow data subjects to indicate whether or not they object to the sale. If a data subject does not send a written reply to indicate objection within 30 days, the data subject will be taken not to object.

It is also stipulated in the Bill that irrespective of whether or not a data subject has sent a written reply to a data user to indicate no objection within the 30-day response period, the data subject may subsequently at any time indicate in writing the objection to the sale of his personal data. The data user must cease selling the personal data of the data subject. Moreover, the data subject may send a written request to the data user to inform persons to whom his personal

data has been sold to cease using such data. Upon the receipt of such notification, the buyer must cease using such data.

The regulatory requirements proposed in the Bill seek to strike a balance between safeguarding personal data privacy and facilitating business operations to provide data subjects with an informed choice as to whether to allow the use of their personal data in direct marketing.

The Bills Committee has scrutinized the proposed regulatory requirements in the Bill in a careful and in-depth manner and listened to the views of deputations at two meetings. In response to the concerns, views and recommendations of the Bills Committee and the Privacy Commissioner for Personal Data (PCPD), we have put forth amendments to the regulatory requirements in various aspects.

First, the Bills Committee has been most concerned about the "opt-out" mechanism adopted under the proposed regulatory requirements and the "taken not to object if no reply sent within 30 days arrangement". Though some of the Members have accepted the "opt-out" mechanism, some Members have considered that explicit consent from a data subject must be obtained before the personal data of the data subject is sold or used for direct marketing. As such, these Members have proposed the adoption of the "opt-in" mechanism. Some other Members have put forth the proposal to ask the authorities to consider adopting the "opt-in" and "opt-out" mechanisms respectively for the regulatory requirements on the sale of personal data and the use of data in direct marketing. The PCPD is of the view that the adoption of the "opt-in" mechanism is the ultimate goal, yet he also understands that it takes time for consumers to adjust. Besides, at present, the "opt-out" mechanism is adopted by most of the overseas jurisdictions for direct marketing purpose. Hence, the PCPD agrees to adopt the "opt-out" mechanism for direct marketing purpose at this stage. Yet, the "opt-in" mechanism is adopted for the sale of personal data.

Regarding the "taken not to object if no reply sent within 30 days arrangement", the Bills Committee and the PCPD have expressed grave concern. They have considered that a data subject may for various reasons fails to send a reply. For instance, the relevant notification from a data user may not have reached the data subject as the data user's record of the data subject's address may

not be up-to-date, or the data subject's reply to indicate objection may not reach the data user.

In view of the views expressed by the Bills Committee and the PCPD about the proposed regulatory requirements, we agree to withdraw the "taken not to object if no reply sent within 30 days arrangement" after discussing with organizations in the relevant sector. A data user can only sell a data subject's personal data, or use or provide such data to others for use in direct marketing if the data user has received a reply from the data subject indicating no objection to such acts.

Secondly, requirements relating to the sale of personal data under the Bill are originated from the sale of personal data of a large number of customers by certain enterprises for use in direct marketing without giving explicit and specific notification to, nor seeking the consent of, their customers about the sale. These cases have aroused extensive concern in society. Hence, we have put forth regulatory requirements on the sale of personal data in the Bill to address these concerns.

However, the definition of the term "sale" is rather broad under the Bill, so it may inadvertently cover certain activities generally accepted by and fallen within the reasonable contemplation of a data subject. Hence, we propose to confine the scope of regulation to behaviour involving the sale of personal data for direct marketing purpose.

In this connection, we have replaced the original word "sale" with the expression "provision for gain" in the amendment. The change is made out of the concern of the sector about the word "sale". In direct marketing business, generally speaking, personal data may be authorized or licensed for temporary sharing or use in a period of time, where no transfer of ownership is involved. The word "sale" implies that the seller ceases having the ownership or retaining any control over the use of the data, which is not an accurate description of the behaviour. To provide clarity, we propose replacing the word "sale" with the expression "provision for gain".

Thirdly, the Bill proposes that data users must provide the prescribed information in writing to data subjects, and data subjects must give a written reply to data users. Some organizations in the sector have pointed out that verbal

consent should also be acceptable. Taking into account that it is not uncommon for personal data to be collected and transactions concluded over the phone, we consider it acceptable for data users intending to use the personal data of data subjects in direct marketing to obtain verbal consent from data subjects. This will leave appropriate room for business operation.

To provide additional safeguard, we propose that if consent is given orally to indicate no objection, the data user must, before using the personal data in direct marketing, confirm in writing to the data subject within 14 days from the date of receipt of the reply of the consent stating the date and particulars of the reply.

If a data user intends to provide a data subject's personal data to others for use in direct marketing, whether for gain or not, the data user must provide the relevant information to the data subject in writing and must receive a consent in writing from the data subject before making such provision. This is to ensure that the privacy of the personal data of data subjects is fully safeguarded when a third party is involved.

Fourthly, under the Bill, even if a data subject has indicated no objection, he may subsequently at anytime notify a data user of his objection to using his personal data in direct marketing or providing his personal data to others for use in direct marketing, whether for gain or not. Data subjects may also notify data users to inform persons to whom their personal data has been provided for use in direct marketing to cease using such data for such purpose. The Bill stipulates that such notification made by data subjects must be put forth in writing. The PCPD considers the requirement is not convenient for data subjects to raise objection. We accept the views of the PCPD and propose in the amendment that data subjects may give notification orally.

Fifthly, to address cases involving personal data collected before the commencement of the new requirements, we propose introducing the "grandfathering" arrangement mentioned by a Member earlier under the Bill. As I have pointed out in my speech at the Second Reading, we consider the term "exemption arrangement" more appropriate and suitable. The exemption arrangement stipulates that if prescribed conditions are met before the entry into force of the new requirements, and personal data collected previously is continued to be used in the same marketing subject in direct marketing after the

new requirements come into force, then the new requirements on direct marketing will not apply.

I have just stated the proposals in the Bill. However, some organizations in the sector have indicated to us that in the business world, direct marketing activities often involve the use of different combinations of personal data. To cope with this need, these organizations have suggested that if a data user has used any personal data of a data subject in direct marketing before the new requirements on direct marketing come into force, the exemption arrangement should be applicable to any personal data of the data subject continued to be used after the commencement date in relation to the same class of marketing subjects.

Having discussed with the Bills Committee and the PCPD the particulars for the exemption arrangement, we propose amending the relevant exemption arrangement. The new proposal is that if a data user has explicitly informed a data subject of the use of his personal data in certain classes of marketing subjects before the requirements relating to direct marketing come into force; if the use of the data subject's data has not violated any provision of the PDPO in force at the time, and if the data subject has not indicated objection, the new requirements will not apply when the data user continue using the data subject's personal data, which he has owned before the commencement date and updated at times, in the same class of marketing subjects in direct marketing after the commencement date of the new requirements. This exemption is only applicable to data users in using the personal data of data subjects in direct marketing, but not applicable to the provision of the personal data of data subjects to others for use in direct marketing, whether for gain or not.

The exemption arrangement is appropriate and justified, for a data user has contacted a data subject in respect of the direct marketing activities, and if the data subject wants the other party to stop the direct marketing activities, he may as well put forth such a request, yet he has not done so. Moreover, it should be the reasonable contemplation of the data subject that his data will be used in direct marketing for the same class of marketing subjects.

I would like to emphasize that the exemption arrangement will not affect the right of a data subject to object to the use of his personal data in direct marketing at any time. Data subjects may raise objection at any time.

I would like to reiterate a point I mentioned in my speech at the Second Reading, that is, the exemption arrangement does not mean to let off offences in the past. It does not mean that. As I mentioned earlier, certain conditions must be met to make the exemption arrangement apply, which include the collection and use of such personal data in direct marketing in the past has not violated any of the provision of the PDPO in force at the time. In other words, no violation should be involved in the past. Moreover, after the new requirements come into force, this exemption arrangement is only applicable to the direct marketing of the same class of services or products.

Chairman, the various aforementioned amendments have undergone repeated discussion of the Bills Committee, the PCPD and organizations of the relevant sector. And, the amendments are proposed after serious consideration is given to their views. The Bills Committee has also examined these amendments. In comparison with the proposals in the Bill, the proposed regulatory requirements as amended are much improved. They can on the one hand tighten the regulation to enhance the protections for privacy of personal data, and retain room for business operation on the other, thereby striking a better balance. The Bills Committee also supports the amendments proposed by us. I implore Members to support this amendment.

I know that Mr James TO will put forth five amendments later, and I will again give a detailed response after Members have spoken.

Chairman, I so submit.

Proposed Amendment

Clause 21 (See Annex I)

MR JAMES TO (in Cantonese): Chairman, the Secretary said earlier that he had had considerable discussion with the Privacy Commissioner for Personal Data (PCPD). In fact, I have also had considerable discussion with the PCPD. It is true that the amendment now proposed by the Secretary has brought improvement to the Blue Bill. However, the PCPD is still not satisfied with the Government's proposals …… as mentioned earlier, he still considers many aspects far from satisfactory. Regarding my amendments, the PCPD considers that they are

better than the Government's amendment on several points. Certainly, since the amendments put forth by me will have to undergo separate voting eventually, they may hardly be passed.

I have put forth five amendments, where the first and the second amendments belong to one group and the third and the fourth belong to the other, and the fifth amendment is in the last group. It means there are three groups of amendments. The first and second amendments are related to the so-called transitional arrangement under the new requirements on direct marketing. According to the Bill of the Government, data users may continue using, in direct marketing, the personal data they have collected according to the existing legislation and the data they have used for direct marketing purpose in the past upon the implementation of the new legislation. The so-called "upon the implementation of the legislation" is a day after the commencement date to be appointed by the Secretary under clause 1(3), which we put to vote earlier, and clause 21 of the Bill is also referring to this commencement date.

The PCPD has pointed out to the Bills Committee that upon the enactment of the Bill, it will take time for the Office of the Privacy Commission for Personal Data (the Office of PCPD) to formulate new guidance notes and conduct promotion and education activities, and the Government may need to allow some time for data users to make preparation, so it is expected that the legislation can only some into force a long time after its enactment — The Secretary said earlier that it might take nine months. However, the Office of PCPD is concerned that knowing tighter regulation is imposed on the collection of personal data under the new requirements, some data users may take advantage of the grandfathering arrangement and the opportunity arises during the intervening period to carry out massive direct marketing activities to avoid subjecting to the more stringent provisions set under the new requirements on the grounds that the data has been used before the commencement date, the data users can thus continue to use such personal data. The Office of PCPD thus proposes to the Government the revision of clause 21, so as to specify a cut-off date under section 35D, so that after that date, data users can no longer invoke the grandfathering arrangement.

I share the concern of the Office of PCPD and I have thus put forth these two amendments to section 35D under clause 21 of the Bill. In my first amendment, 8 July 2011 is set as the commencement date for section 35D, which is the date this Bill was first gazetted. In other words, this should be the cut-off

date for seeking cover under the grandfathering arrangement, where data users may continue to use the personal data which they have collected and used for direct marketing purpose before that date. Since the cut-off date is 8 July 2011, no one will be allowed to take advantage of the so-called "window period" upon the entry into force of the legislation by using the data in one massive exercise to retain the right to continue using such data.

As for the second amendment, I propose to use the date of Third Reading of the Bill at the Legislative Council as the commencement date. If the Bill is passed and read the Third time in the next few days, we should at least set that date as the commencement date instead of a day nine months after the passage of the Bill. Otherwise, the public will be disturbed incessantly during those nine months. Why? For if data users holding a large volume of such data do not use the data to carry out direct marketing to the data subjects at least once within those nine months, they have to comply with more stringent requirements stipulated in the legislation in using such data nine months later. Members can imagine the situation. If data users have to first obtain oral consent and then give a written confirmation before using such data in direct marketing, they will consider it rather troublesome. Therefore, data users will take advantage of the nine-month period to carry out at least one direct marketing exercise, and this will cause considerable nuisance to society.

Chairman, regarding my third and fourth amendments, they focus on the adequacy of the requirement for verbal indication of no objection from data subjects in the collection of personal data for direct marketing purpose by data users. According to the requirement of the government proposal, data users are only required to obtain the oral or written consent or no objection indication from data subjects in collecting personal data for direct marketing purpose. Chairman, as I said at the Second Reading debate, if oral consent is already suffice, who will bother to give a written confirmation?

As such, if either oral or written consent is accepted, I believe an overwhelming majority of data users will take the easy way rather than the difficult one, and that means they will definitely seek oral consent. However, is verbal consent or indication of no objection adequate? I think it needs no further explanation, for people are usually less cautious when they speak and they may not necessarily get all the salient points when they listen. If the content is relatively complicated and conceptual in nature, or involves details, a data subject will not be able to understand it when it is read out, as in the case of the

provisions just read out by Mr WONG Yuk-man, where Members can hardly understand despite listening to him. However, if a written copy is provided for reading, the restriction of time and space is no longer a concern, for the reader can refer to the copy at any time or read the copy again when he does not understand it.

It is the habit of men. If I am asked to return a written reply or an email, I will consider the issue more seriously. However, if it is only a long conversation over the phone which simply asks …… besides, promotion materials and questions are mixed in the conversation. In other words, part of the conversation may be on the promotion of a certain product, yet the other part may involve seeking the consent or indication of no objection from a data subject for going into more detailed explanation. The cautiousness and thoughtfulness accorded by the data subject under such circumstances are definitely lower than in the case where they have to give written consent or indicate no objection.

The Office of PCPD has pointed out to the Bills Committee that in comparison with the initial proposal of the Bureau in requiring data users to obtain written consent, the adjustment to allow data users to obtain the oral consent of data subjects for using the relevant data in direct marketing has watered down the protection for data subjects. This is the view of the PCPD. To offset the water-downed effect as far as possible, the Office of PCPD proposes that data users should obtain a written confirmation after obtaining oral consent, meaning data subjects have to confirm in writing when the oral consent is given, so as to serve as a reminder to data subjects. Then, the data user has to wait for 14 days, and if no objection from the data subject is received, the data user may start using the data in direct marketing. I agree with the proposal of the Office of PCPD. So, I put forth this amendment, which is actually the proposal of the Office of PCPD.

As for the fourth amendment, it seeks to amend section 35E under clause 21 of the Bill. My third amendment is also put forth to amend that provision to address the same concern. The proposal is similar to the one put forth by the Bureau in the Bills Committee, yet the Bureau has withdrawn the proposal subsequently in response to the request of the sector. In other words, the third amendment is about a proposal which the Government has put forth in the course of discussion. The content is straightforward, that is, written consent and not merely oral consent must be obtained.

Chairman, the fifth amendment seeks to allow a data subject to request the direct marketing company to provide the source of obtaining his personal data, and this is the right of tracing. We often receive some direct marketing calls from companies which we do not know, and many people want to know how the direct marketing companies obtain their data. Many people will seek clarification on the phone immediately. Direct marketing companies will usually give the following responses. Some may hang up immediately, some may just say "that is all", and some may give some convenient excuses.

Since the data belongs to the data subject, and the data subject does not welcome direct marketing calls at all, the data subject may, other than requesting the direct marketing company to stop calling …… The data subject may request the direct marketing company to stop calling, but that direct marketing company may not be the source of the problem, for the personal data of the data subject may have been disseminated several rounds, where people have been circulating the data around until everyone has got such data. If that is the case, what can the data subject do? The data subject may stop the call from one direct marketing company, but to put it bluntly, it cannot stop the nuisance.

With the right of tracing …… tracing does not mean making claims for compensation but the right to request a direct marketing company to provide the source which it has obtained the data. Has the consent of the data subject been sought? If the oral or written consent of the data subject has been obtained, the direct marketing company has to inform the data subject of the time the consent is given, for the consent might have been given many years ago and the data subject might have forgotten due to absent-mindedness.

However, if the data is not obtained with the consent of the data subject but from other channels, the direct marketing company must inform the data subject how it has obtained the data. The data subject can only trace back one level after another …… However, it is very troublesome to the one being disturbed, that is, the customer. Even if my amendment is passed, the data subject would have suffered a lot, for he will have to stop the problem at source by various means in order not to be disturbed again and again.

Nonetheless, the Government disagrees with this. According to the new requirement, data users have to obtain the consent of data subjects before providing their personal data to other people for use in direct marketing. However, the grandfathering arrangement is provided in the legislation, which

allows data users to continue using data they might have bought via other channels in the past.

We notice from the Octopus incident that personal data has been provided to different direct marketing companies a number of times for making profit. Therefore, upon the implementation of the new requirement, the data subject may still receive a lot of irrelevant direct marketing calls without his consent. The focus of my amendment is to enable the data subject to trace the source providing such data to deal with the problem at root. First, the data subject may request the source to stop disturbing him and stop using his data. At the same time, the data subject may request the source to notify other organizations or persons to stop disturbing him.

According to the new section 35H proposed in my amendment, direct marketing companies must inform a data subject, at his request, of the source of the data, as well as how to find the source providing such data. If the direct marketing company fails to provide such information, they are offered an alternative, that is, to provide a written declaration to the data subject within 14 days to indicate that the source cannot be identified. The failure may be attributed to the incomplete record kept, for instance, the data might have been bought 10 years ago, and the data is still being used for product promotion. In the case where data subjects request direct marketing companies to stop using their data and wish to know the source providing such data, if data users have not kept a complete record and cannot find where they have got the data, they must inform data subjects of the truth.

I also try to make life easier for others. I do not mean to push direct marketing companies to a dead end, for it may be true that they obtained the data a long time ago. However, they should at least inform the data subject that they have failed to identify the source. Perhaps the record they have kept is in a mess. However, at least they have to truthfully inform the data subject that they cannot identify the source. On the contrary, if direct marketing companies inform data subjects that they cannot identify the source when they indeed can, it is a criminal offence. In other words, direct marketing companies only need to identify the source with due diligence, and if they fail to identify the source, they only need to inform the data subject of the truth and issue a declaration to the data subject. Certainly, the amendment proposes to make the provision of false and

misleading materials a criminal offence liable to a fine of $50,000 and imprisonment for one year.

Newly-added section 35M stipulates for the regulation of the source persons and organizations supplying the data, so that a data subject may trace the source step by step and address the problem at root. Therefore, the two provisions state unequivocally that data users failing to provide the source of data must stop using the personal data in direct marketing. However, the data user may immediately seek the consent of the data subject according to the new requirements for the continual use of his personal data. In other words, direct marketing companies may by means of phone …… the data subject may be angry, but if the direct marketing company manages to "induce" the data subject, I may have put it coarsely, and obtains the consent of the data subject immediately, the company may continue to use the personal data of the data subject.

Therefore, my amendment will not undermine the business opportunity for direct marketing companies, for direct marketing companies may contact the data subject, and if the data subject requests a cease for using his data, direct marketing companies may continue to persuade him to give his consent or indicate no objection. On the other hand, this amendment will prompt data users to carry out direct marketing only after obtaining the consent of data subjects, which will minimize ineffective direct marketing services and the nuisance caused to data subjects, thereby alleviating the resistance and dissatisfaction of data subjects. I believe this amendment is favourable to the development of the direct marketing sector in the long run. In the course of scrutiny, the PCPD has put forth similar proposals, but they have not been accepted by the Bureau. Hence, I have to put forth this amendment.

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I have received calls from a very popular hotel a number of times. The caller claimed that my friend referred me to them and they got my data from my friend, and they called to introduce some special offers of the hotel. When I asked the caller who that friend was, he just said he could not tell me and did not further explain how he

got my data. I do not know whether others have similar experience, yet I have received these calls a number of times.

Earlier on, Mr James TO said that the source of data should be traced, and I think it is important. If my friends give my data to others casually, I will definitely ask them to stop doing so and tell them I do not want to receive these direct marketing calls again. However, when I asked the hotel who had provided my data to them, they refused to tell me. We do not know whether the caller from the hotel has told the truth. If we have no right to trace the source, nor the right to request explanation from the other party, we will continue receiving these calls. We will have to put up with the nuisance caused by calls from different direct marketing companies. To address this issue, I consider it necessary to enact legislation to offer protection, so that data subjects have the right to trace the source. Mr James TO said that the Government did not quite agree with this proposal and had not put in much effort in this respect, yet I support the view of Mr James TO.

The second point is about the transitional period. It is expected that upon the passage of the Bill, it will still take nine months for transition before the new requirements come into force. The Secretary said that direct marketing companies must obtain our data through lawful channels and not unlawful ones. However, I still consider the transitional period too long, and it will leave too much room for direct marketing companies to do whatever they want. I think such a long transitional period is worthy of concern.

Regarding oral consent, pardon me for putting it bluntly, people can easily be cheated or pressurized to say "yes". This is not only the case for direct telephone marketing. Recently, I have been the target of many promotion of services and products such as travelling membership, English tutorial classes, aromatherapy, and so on. During a face-to-face promotion, customers often come under pressure and sign some documents. Customers are easily pressurized to sign documents during oral marketing. This is also a cause of concern. Therefore, I think a written undertaking is more proper and safe. Even if I am illiterate, I can ask others to help. Even if I have wrongly signed the consent after listening to the explanation of others, I can continue to ask for clarification. The degree of protection is greater in this way. Therefore, I consider the practice of giving a written undertaking more desirable.

Chairman, lastly, I would like to ask the Secretary one point. She said in her earlier speech that she had discussed the Bill with the Privacy Commissioner for Personal Data (PCPD) and the PCPD said there was no problem about this. However, this is not what Mr James TO said. He said that the PCPD also expressed his dissatisfaction and listed a number of unsatisfactory points. I have listened attentively to the earlier speech of the Secretary, yet she said this in an obscure manner, only stating that she had communicated with the PCPD. Did the PCPD have many complaints in private as stated by Mr James TO? If this is the case, why did the Government not attach importance to the views of the PCPD? Will the Secretary clarify whether her remarks or Mr James TO's remarks are true? I just wish to seek clarification about this issue.

Chairman, I so submit.

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

MR WONG YUK-MAN (in Cantonese): Chairman, a quorum is not present.

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

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

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, you may speak now.

MR WONG YUK-MAN (in Cantonese): Chairman, I would like to talk about Part VIA, to which Mr James TO has also put forth his amendment. The proposed new Part VIA in the Bill is about the "opt-out" and "opt-in" mechanisms.

The term "opt-out" mechanism sound extremely offensive. The rationale involved seems to be similar with the application for the No Objection Letter prior to any assembly or march under the existing draconian law on public order.

We will in no way agree with the enactment of a law to allow any organization to use or sell the personal data of a data subject, whether for gain or not, when the data subject has not indicated objection. Is it going too far? It is just the same as in the No Objection Letter case. The police usually issue the No Objection Letter to indicate no objection to marches. Yet I have the experience that a No Objection Letter was not issued, man. In 2007, the police issued an Objection Letter and disallowed us to stage the march, and we were blocked in the Victoria Park. This is comparable to the trammel worked by spell and ready for use, so that it causes headache once the spell is cast. Therefore, when it comes to the 1 July March or assembly to be held, or the application for staging marches on 30 June by other organizations, the police — I am surely referring to Andy TSANG — will put up all kinds of hurdles.

In the Bill, an "opt-out" mechanism is also proposed. Data subjects are always put in a disadvantaged position, taking every unfair treatment lying down. Under the "opt-out" mechanism, when no objection is raised, it means the data subject has accepted the arrangement. On the one hand, we consider it necessary to enact legislation to protect or safeguard intellectual property, yet on the other hand, certain organizations are allowed to use or sell our personal data without our consent. It is ridiculous, is it not? You may disagree, for you will say that the "opt-out" mechanism is in place, and only when the data subject has not indicated objection, the data user is allowed to use his personal data.

In paragraph 25 of the report of the Bills Committee, it says, "the Hong Kong Direct Marketing Association has taken issue with the use of the word "sale", which is commonly taken to mean giving up of ownership or control". I think it is idiotic to say "giving up of ownership or control". You are talking about giving up "ownership" and giving up "control". How can these organizations have the ownership and control of the personal data of the public? The Association somehow knew its limit, and it thus disagreed with the use of the term "sale".

However, if organizations do not have ownership or control of the personal data of the public, why they have been making profit from the data all along? This is a point of gravest concern to Mr WONG Ting-kwong. So, it is fundamentally unjustified.

Now that the Government takes heed of the views of the sector, for they feel embarrassed too — Why use the term "sale", man, do you own the data?

Does the data belong to you? It is ludicrous. How can you sell my personal data such as my telephone number? But they are in actuality selling such data. What is this called? It is self-deception. Just like the Communist Party, they are good at self-deception.

Replacing the term "sale" with the expression "provision for gain" is merely a cosmetic cover-up of the bandit behaviour. When they use my personal data to reap profits, they are actually robbing me. I will call the amendment a cosmetic cover-up of thieving behaviour. A twisted logic will not become the truth even if it is stated a hundred or even a thousand times. Some people said, "His unauthorized structure only involves 200 sq ft, yet the unauthorized structure of another person involves 2 000 sq ft, and there is a big difference in scale between 200 sq ft and 2 000 sq ft." Remember, no matter you have stolen $10 or $100, you have stolen after all. What kind of logic are those people adopting? Dr David LI has made a good remark: If it is an unauthorized structure, be it 1 sq ft or 1 000 sq ft, it is unauthorized. Dr LI may have some emotional ties, yet we do not discard his good words because of his stance. What he said is true, is it not? It is not easy that those people still guard him, but how can they guard him under the prevailing circumstances? The election is approaching; it is just a waste of medical fees even if he can be cured. Am I right?

Since they have been used to this kind of ideology and value, they replace the term "sale" with the expression "provide for gain". If it is not bandit logic, what is it? Despite the alteration of the wording, the evilness cannot be removed. It is evil to provide or transfer the privacy of the public without their prior consent, even though the term "sale" is changed to the expression "provide for gain". Politics abounds with evils. In the recent period, the public should have seen that.

Chairman, a quorum is not present.

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

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

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): Concerning the change of the term "sale" into the expression "provide for gain", as I said earlier, it is evil that the privacy of the public can be provided or transferred without their prior consent. What defence has the Government put up? The Government says that the "opt-out" mechanism is also adopted in other jurisdictions. However, the practice in other jurisdictions should only serve as a reference. This is how the Government acts. More often than not, when such practices conform to its wishes, it will copy them to Hong Kong. However, sometimes when we put forth proposals stating that other jurisdictions are also adopting such practices, the Government will say that the proposal does not suit the actual situation in Hong Kong if such a proposal does not conform to its wishes. It is like the Communist Party which also says that Western democracy does not suit the situation of the nation. It does not know that the nature of democracy should be the same around the world irrespective of regional location.

If the defence of the Government is valid, legislation of other jurisdictions may be accepted wholesale. Why bother to scrutinize the bills? We may as well copy the legislation of other jurisdictions, there is no need to draft legislation or make any amendments, we may simply copy every word from them. Each country or region has there uniqueness, different social needs and situation of the state, is it not? This point is simple. I do not know whether the Government has the following figures. Since the Government says that the "opt-out" mechanism is adopted by other jurisdictions, can it tell me whether the public in those jurisdictions that adopt the "opt-out" mechanism have lodged complaints? What is the number of complaints received?

A Member said earlier that he kept receiving "cold calls", sometimes eight to 10 calls a day — perhaps he has an unlucky phone number. I receive these telemarketing calls occasionally, telling me some special offers, and naturally I will hang up. There will be eight to 10 calls, or at least three calls, a day. The calls cover various areas, including beauty, investment, slimming package and loan services, as well as survey calls from the Hong Kong Research Association, Bauhinia Foundation Research Centre or the POP of the University of Hong Kong, and so on. These calls are quite a nuisance, and the public have to bear unnecessary call expenses arising from these calls. The crux is not the amount

of expense incurred but that I should not be responsible for such expenses. So, I think it is inappropriate even if I only need to pay 10 cents.

The Government says it hopes that via Part VIA, a balance between safeguarding personal data privacy and facilitating the efficiency of business operations will be struck. It is exactly the point about the efficiency of business operations that has caused Mr WONG Ting-kwong to launch criticism every day, is it not? A balance between business operation efficiency and the handling of cold calls has to be struck. Mr WONG is also a businessman, should he accord the promotion of business operation efficiency a higher priority, and personal data privacy a lower priority? The objective to "strike a balance" always turns out to be the opposite. In other words, instead of striking a balance, it will always result in a loss of balance. This is evident by many incidents in the past. As such, is the remark of "striking a balance between safeguarding personal data privacy and facilitating the efficiency of business operations" offensive? For the outcome will be a loss of balance.

Why the legislative intent of the Personal Data (Privacy) Ordinance (PDPO) will be facilitating the efficiency of business operations? If that is the case, the Ordinance should indeed be renamed the "Facilitating Efficiency of Business Operations Ordinance". But now, it is putting the horse before the cart. As I said the other day, things have their root and their branches; affairs have their end and their beginning; to know what is first and what is last will lead near to what is taught in the Great Learning. The "opt-out" mechanism is an improper arrangement. The Government may as well rename the legislation "Facilitating Efficiency of Business Operations Ordinance". The legislative work started in the era of Stephen LAM, and it has been carried on for many years. But it turns out that the legislative intent of the PDPO is to facilitate the efficiency of business operations. Facilitating the efficiency of business operations should be the responsibility of the Commerce and Economic Development Bureau. Am I right? There is nothing wrong with facilitating the efficiency of business operations, but it should not be achieved at the expense of the privacy of the public. This logic is comparable to the case last week when we were forced to accept the Mandatory Provident Fund Scheme (Amendment) (No. 2) Bill, is it not? We consider the idea of sacrificing the interest of the public for the business sector to make profit unacceptable.

Regarding the work of the Privacy Commissioner for Personal Data (PCPD) in safeguarding privacy and the stances he made sometimes, we consider that extremely disappointing. Particularly when there were some records of undesirable performance of Mr CHIANG's in other positions in the past. Concerning the adoption of the "opt-out" or "opt-in" mechanism in Part VIA, the PCPD has expressed his stance. Members may refer to paragraph 13 of the Bills Committee report, which states, "it (opt-in mechanism) should be adopted in Hong Kong as an ultimate goal to better protect personal data privacy and respect customers' rights of choice. As it would take time for consumers and the trade to adjust to an 'opt-in' mechanism, the PCPD has suggested that an improved 'opt-out' mechanism with some interim measures, such as a central 'Do-not-call' register for person to person telemarketing calls, should be put in place before the full roll-out of an 'opt-in' mechanism." Members may find this remark from the PCPD somehow familiar. When the same Bureau of the Government responded to our urge of universal suffrage, it said on the one hand that universal suffrage was the ultimate goal set under the Basic Law, but on the other hand, it refused to abolish the functional constituency system and even had it expanded. We should thank the Democratic Party for this, should we not? The same logic is applied, right? What is the difference?

Why it would take time for consumers to adjust to the "opt-in" mechanism? Consumers should have the right to choose how their personal data is handled. It is natural and reasonable, is it not? The remark of the PCPD is indeed *(The buzzer sounded)* …… forcing consumers to accept the "opt-out" mechanism ……

CHAIRMAN (in Cantonese): Mr WONG, your speaking time is up.

MR WONG YUK-MAN (in Cantonese): …… just one more remark. The improved "opt-out" mechanism mentioned by the PCPD will render the implementation of the "opt-in" mechanism, his ultimate goal, nowhere in sight.

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

MS CYD HO (in Cantonese): Chairman, I will briefly respond to Mr James TO's amendments and the Government's amendment to the original section 35 of the principal Ordinance.

First of all, nowadays, direct marketing activities have undeniably become part of the economic activities in Hong Kong, but, in many cases, direct marketing activities are disgusting and those sudden telephone calls are annoying. As we all know, experience tells us that it is impossible to rely on the industry's self-discipline. After the incident concerning the resale by the Octopus of the privacy data of the public for profit, the authorities have taken a step forward and amended this Ordinance as a response. However, this step is honestly not enough.

As far as I remember, there was a merger of 13 banks by the Bank of China (Hong Kong) Limited before 2004. At that time, a merger of all customer information without customer consent was proposed, and there was a transfer of personal data. We strongly opposed the merger because the reason why an ordinary client patronized a certain bank might be that he knew and trusted the bank manager. The bank would become a conglomerate after the merger and the clients might not continue to agree to provide the bank with their data, or they might prefer to leave the bank after the merger because it was not to their liking. This caused the then Secretary for Home Affairs and the Privacy Commissioner for Personal Data to formulate an administrative measure, which required all organizations involved in mergers to issue a notice to clients. They could only transfer clients' data with their written consent. And, of course a specified time limit was set. This ought to be done even though the process was really expensive. As a result, the Bank of East Asia also took the initiative to adopt this measure during its merger.

For this reason, it is completely feasible to establish an opt-out or opt-in mechanism. Any organization that is unwilling to do so just wants to reduce costs, or to conduct direct marketing business in a self-beneficial and fast way. This method is undesirable. If it wants to do business, it should first avoid causing aversion among customers or making customers suffer financial losses due to long-distance call charges. If an opt-in mechanism is established under which a fully-informed customer willingly accepts the relevant information or allows the transfer of his personal data to other people, there will be a greater chance for direct marketers to successfully do business. However, it is a great

pity that individual businessmen disregard the interests of the development of the whole industry and take a shortcut for convenience sake. In the long run, this annoying behaviour will only damage the direct marketing business as a whole. Take me as an example. I will not provide any of my data now. Even if it is a large organization or a service I badly need such as the television or broadband service, so long as I am required to provide data or asked to sign certain agreements, I will simply not patronize them and even cancel the account I am having with them.

Nevertheless, I believe not every member of the public is so "tyrannical" for they may not understand their rights or adopt such an unyielding attitude. Many people have often unwittingly provided their personal data such as telephone number and email address. This may seem trivial to an individual, but the collection of such data in bulk actually involves significant economic interests. The abuse of such data may also cause damage to the related industries.

I certainly support Mr James TO's amendments but unfortunately we again need to vote on the Government's amendment first. Mr TO can only move his amendments if the Government's amendment is not passed. I also understand that in the course of scrutiny, Members from the business sector have expressed aversion to Mr James TO's amendments. Thus, it is very unlikely for the amendments to be passed in separate voting. So, we have no alternative but to make a very difficult decision later to see if we will allow the Government's amendment to be passed.

Moreover, regarding the grandfathering arrangement, it is also a common legislating practice because "what has gone is gone, just prevent the same mistake in the future". However, when it applies to this Ordinance, it is not the case. The Bill will only come into effect nine months after its passage, according to the Under Secretary. Undoubtedly, a data user will quickly use the collected personal data once within these nine months and will casually resell such data afterwards. Before the Bill really comes into effect and imposes regulation, such data will have caused much nuisance within those nine months. Hence, it is desirable to set the date on which the Bill is read the Third time as the commencement date of the legislation because this can alleviate the adverse effect of "not preventing the same mistake" in the transitional period.

In the improved amendment proposed by the Government now, it provides for an "opt-in" mechanism to a certain extent, which specifies that when a data subject, that is, individual customer negotiates another service agreement with an organization, the organization must inform the customer on the spot that it will call him or send him emails to cause a nuisance in the future by using his data. Of course, it will say it on a much more pleasant manner, telling the customer that he will be given some special offers.

It is specified in the new amendment proposed by the Government that an organization must give an explanation in a manner that is easily comprehensible and it must have customers' consent before it can use their data in the future. If the consent is given orally, the organization has to send a written confirmation to the customer within 14 days. What is the use of a written confirmation? It is to prevent the elderly from being deceived. If a written confirmation is sent to their home, there is a chance for their family members who are familiar with individual rights to have a look. They find out whether there are any unfavourable arrangements involved. However, the arrangement of oral consent is not enough.

Chairman, it can be said that nuisance caused by the provision of personal data is minor. When selling high-risk investment products, some banks claim that they have fully explained everything to customers orally, but the investment may amount to several hundred thousand dollars. However, such oral explanation has actually caused some customers to unwittingly fall into a trap. Even customers are required to fill out some questionnaires, these questionnaires are misleading. I have recently got a questionnaire used by the HSBC. One of the questions is whether a customer has purchased any investment products within the past three years, including bonds of a very low-risk and secure nature. If he ticks the answer "yes", the bank will regard him as a professional investor. Even a written questionnaire that can be made public is so misleading, not to mention an explanation given orally.

Chairman, we have thus asked the authorities in the course of scrutiny if they can set the standard expressions for an oral explanation and record such explanation, so that a customer who would like to listen to the explanation again may have a chance to do so, and his family members can also listen to the explanation and find out if he has been deceived or coaxed in the process. Yet, the legislation cannot achieve that for the time being. Express regulation can

only be made when various details and codes of practice are formulated in the future.

Furthermore, Mr James TO has proposed tracing the source in light of the grandfathering arrangement. If the Government's grandfathering arrangement is passed, Mr James TO's amendment about tracing the source will become more useful. Unfortunately, this effect cannot be achieved according to the present order of voting on the amendments. Hence, we need to make a very difficult decision in the voting later on. Chairman, I hope that early discussion with Members about the order of voting can be made in the future. Otherwise, such a difficult situation will frequently happen. Thank you, Chairman.

CHAIRMAN (in Cantonese): It is now 7 pm, I now suspend the meeting until 8 pm.

7.00 pm

Meeting suspended.

8.00 pm

Committee then resumed.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): The Secretary for Constitutional and Mainland Affairs is not yet in her seat.

(A quorum was not present in the Chamber)

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

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

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, I ……

(Mr WONG Yuk-man rose)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, do you have any questions?

MR WONG YUK-MAN (in Cantonese): I would like to ask if it is now time for him to speak or if he is called upon to speak because no other Members wish to speak.

CHAIRMAN (in Cantonese): I have asked if any Members wish to speak just now but you have not indicated your wish to do so.

MR WONG YUK-MAN (in Cantonese): I cannot hear you and I wish to speak now.

CHAIRMAN (in Cantonese): You may now speak if you wish to. Mr James TO, please wait.

MR WONG YUK-MAN (in Cantonese): Chairman, I earnestly wish to express my views but I am sorry that I cannot hear you just now.

I have not yet spoken on Mr James TO's amendments, so, I must say something. Mr James TO's Amendment 1 proposes changing the effective date of the provisions on the use of personal data in direct marketing to 8 July 2011, on which the Bill was read the First time. As I have mentioned in my speech about the effective date, I think that it is essential to plug the loophole of the transitional period. However, the Government has expressed that the transitional period will allow adaptation by data users, which is unreasonable. Why is there a transitional period to allow adaptation by data users? Buddy, they are thieves using my data to make money. I wonder exactly who needs adaptation.

When the Government proposed an increase in tobacco duty, it did not provide a transitional period to allow adaptation by consumers. If a person smoking three packets of cigarettes a day could not adapt or afford to pay, would he be allowed to adapt within nine months or a year? Chairman, not only an adaptation period was not provided when an increase in tobacco duty was proposed, the Government even specified under section 5(1) of the Public Revenue Protection Ordinance, "every order made under this Ordinance shall come into force immediately upon the signing thereof by the Chief Executive unless some other time be specified in the order for the coming into force thereof, in which case the order shall come into force at the time so specified". Tobacco duty was increased before the passage of the Bill to avoid bulk purchase of tobacco by a large number of smokers within the transitional period in order to protect public revenue. Why did the Government not provide a transitional period to smokers? It was also beneficial to the Government if there was a transitional period.

By the same logic, why has the Government that is so careful in public revenue protection and becomes indignant even if it receives a single cent less so rashly and hastily provided a transitional period relating to the protection of the personal data of the public, so as to allow a transitional period for adaptation by data users? Data users are not data owners, and they are using my data, such as my name, address and telephone number and so on. Common sense also tells us that providing a transitional period will have a "last train" effect. It does not take the brain to know this but the knee will do. Direct marketers will carry out large-scale direct marketing activities by email and SMS because there are lower costs and higher incentives. So long as they constantly promote all direct marketing activities to customers within the transitional period, even if there is a

mismatch — promoting products suitable for female customers to male customers or promoting products suitable for middle-age customers to adolescents — they may evade new requirements in the future and update the data. I am sure this situation will continue.

The Secretary has talked about a nine-month period but the Government has not estimated how much chaos will be caused and how serious the infringement of personal privacy will be within these nine months. It is also very inappropriate to put in place a grandfathering arrangement which allows data users to continue to update the relevant data after the Ordinance has come into effect. The provisions in the existing Ordinances in Hong Kong about "no retrospective effect" mostly pinpoint acts before the commencement of the ordinances. Therefore, the legal concept of the grandfathering arrangement, which the Government calls exemption should disallow data update by data users.

The requests made by traders for the existing clients to update data, such as to fill out forms to update their address, income and marital status, should be regulated under the new requirements as this is not covered by the scope of the existing Ordinance. We, in principle, agree with Mr James TO's Amendment 1 but his Amendment 2 is better for it proposes that the commencement date of the provisions on the use of personal data in direct marketing means the date of Third Reading of the Bill. When the commencement date is the date of Third Reading of the Bill, data users will not take the blame for their previous activities, and this will enhance efficiency in business operation and avoid the loophole of a transitional period, which can strike a real balance. Thus, I will oppose the Government's amendment. I must oppose the Government's amendment if I wish to support Mr James TO's amendments. Hence, we will support Mr James TO's amendments.

Moreover, I would like to discuss clause 21 on interpretation, which is about section 35A of Part VIA. The Government has not responded to the question of the Office of the Privacy Commissioner for Personal Data (PCPD) to give clearer definitions of specified kind of personal data, specified class of persons and specified class of marketing subjects. This causes problems relating to data subjects' consent for use of personal data in direct marketing.

Let me give an example. It is specified in section 35J(2)(b)(iii) that a data user who provides personal data to a third party should provide a data subject

with information on the classes of persons to which the data is to be provided. How are the persons categorized into different classes? Are they categorized by rank, gender, industry or other means? As there is no formal criterion, the categorization is very unclear.

Since data users have the initiative, the written notification provided by them may have or will most probably have misleading elements. Does providing data to the catering-related industry mean providing data to the retailers in the catering industry? What does the catering-related industry mean? Will it be very easy for them to muddle through? The provision is very indefinite.

Furthermore, the Government should not regard personal data as the same as sensitive personal data because data concerning pupil, features and palm prints should be given special treatment, and it cannot simply provide the data subjects with information on certain classes of persons. Why is the sale of such sensitive personal data regarded as the sale of some rather simple personal data such as name and gender? Should the Government tell the data subjects the importance of such sensitive personal data?

Without careful understanding and more specific categorization of personal data, data users have to make their own definitions, which is very problematic and inappropriate. Thus, since data users have the initiative, it is highly problematic to rely on them to provide written notification. Besides, the classes of persons are also unclear. Hence, the Government should enact Schedules to explicitly indicate the format used by data users to provide information to data subjects, so as to prevent data users from providing unclear information to guide data subjects to accept the relevant request.

Since the Government has not proposed an amendment in this respect, we hope the PCPD would clearly indicate the classes of personal data, persons and marketing subjects when it formulates the relevant guidance notes. In other words, such guidance notes in the future should give clear indication so that people will have a clearer picture and not be confused. On the amendment to section 35J "Data user to take specified action before providing personal data", I believe such written information will be considered very unclear. So I hope that the PCPD would make suitable and reasonable rectification when it formulates the guidance notes.

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

MR LEUNG KWOK-HUNG (in Cantonese): I support Mr James TO's amendments but I oppose the Government's amendment. The reason is very simple: data users have eliminated data subjects. It is just like what LEUNG Chun-ying did to the illegal structures in his house. He has nearly removed all these structures with just a little bit left. However he disallows further questions about the remaining structures, has he gone too far?

It is totally unfair to disallow a data subject to trace the source because it will help him understand why his data has been passed around if he can find out how another person obtains his data. If not …… The Government considers this unnecessary because in its view, the data is similar to spilled water or a married daughter — it cannot be retrieved and it is meaningless to find out who is involved. Though the Government has stated that it will protect personal privacy, it has neglected the phenomenon that a data user who has obtained the data of another person can use the data in many ways. He may use the data himself or he may sell the data to another person for use in direct marketing. These users have the right to ask the data subject whether he likes another person to use his data though he does not know why his data has been collected.

Most people do not know that their data have been collected but they will be informed at any time when their data has been used or some other persons possess their data. How can the Government let the public understand this and the harm that will be done when their data has been used by other persons? We cannot expect the public to watch the boring debates in this Council; they will be puzzled because they do not clearly understand the content. Nevertheless, the Government requires data users or those engaged in direct marketing to give the victims explanations in their own ways. This is completely senseless. Data users will not elaborate the reasons because they want to ensure that the data obtained will not just disappear like a fish they caught into the water. This is the crux of the problem.

We have identified the problems but the Government seems to lack the determination to remedy these problems. In the legislative process, it has not shown the community its determination to put a stop to these things, nor has it minimized the harm done to the victims. When the Government requires organizations using the data to give explanations, these organizations may just

resort to whitewashing. It is very simple. I was a member of the Subcommittee to study issues arising from the Lehman Brothers incident. I knew that a thick pile of information could be condensed to a sales or publicity leaflet, which was evidently done to fool the public. Yet, the laws allow the sellers to do that. Although investigations will be conducted by the Securities and Futures Commission (SFC), there is not any law authorizing the SFC to investigate whether the allegations are true or not. It is because the Securities and Futures Commission Ordinance does not target derivatives, and just investigations into listed shares can be conducted.

This may be a nominal practice as shown in the example. Can the Government tell me what can be done when a data user does not clearly ask a data subject, thus gives rise to problems after the passage of this Bill? They have nine more months to continue to collect data and perform whitewashing. This is basically unacceptable, so is the mindset of the Government. We believe it is incorrect for businessmen to use personal privacy in immoral transactions, but we will not wipe them out. Moreover, it is very strange for people involved in the information provided by data users to be categorized into different classes. Why is it necessary to categorize them into different classes? Will different classes of people be treated differently? Will men and women be treated differently?

On this point, it seems that the Government is not giving face to the Commissioner it appointed because the Commissioner has also said that this should not …… the Commissioner also made a mistake in obtaining privacy data of other people but it seems that he has made a little improvement now. In my opinion, a responsible government should do the following: first, trace the source to find out how a user obtains the data. If the source is traced, it can then find out how this can be prevented. However, the Government is not willing to do so. It even allows whitewashing and refuses to take retrospective effect. It even gives another nine months' time. Can this be simply regarded as "not taking retrospective effect"? Buddy, it gives another nine months' time. A lot can be done within these nine months.

I think the Government should follow the views of some members of the Bills Committee. Honestly speaking, this Council is really strange. As far as I remember, Members were gnashing their teeth before cameras at a press conference I also attended, as though all data users were heinous; yet, they remained silent when a law has to be enacted. I think the Government should

spare no survivors: firstly, a data user needs to account for how the data has been collected, and the Government should base on this account to identify a suitable legislative method or use other methods to minimize the harm arising from the sale of such data or the careless provision of data to other people. This is the first point.

Second, we cannot rely on people who make money from the use of other people's data or use such data to notify the data subjects. And, we cannot connive at their use of misleading methods so that ordinary people will unwittingly continue to allow them to do that. A more tricky point about the Bill is that a data subject's data can be used if he indicates no objection after he has been notified. Nonetheless, when life is so busy, I am not sure what the use in indicating objection is. Thus, this is an extremely wrong way of doing things. For example, if the Government has money and it allows each person to make a choice: it will give $10 to a person who indicates objection and it will not give any money to a person who indicates no objection, the public will certainly indicate objection. This keeps consumers in the dark.

Third, even if a consumer has given his consent, the data that he previously provided will be more seriously abused or resold within the nine-month period provided by the Government, or a data user will continue to make use of this loophole to collect more data within these nine months. They are like vampires who will naturally suck more blood as they know they will die when dawn comes.

Chairman, I cannot agree with the Government on this point. But, I find it really strange why the Government opposes Mr James TO's amendments. Why is it? Is it because it wants to be antagonistic or because it wants to exert its authority? This reminds me of the time when we scrutinized the Interception of Communications and Surveillance Ordinance in 2006. At that time, you were not the President of the Legislative Council and Dr Margaret NG was very popular since she was always the one to explain why the amendments were made to certain provisions. Just like the case today, the Government stated at that time not even one in all the 200-plus amendments should be passed so as to safeguard the interests of Hong Kong people.

Chairman, there is no fish when the water is very clear. There were all together over 200 fish, but the Government did not even allow some to slip through the net. This is exactly the case today. This precisely reflects the

present political system. The Government will not allow the passage of any amendment regardless of whether it is right or wrong. When we vote later on, I do not know if there will be a crisis of Tumubao involving LEUNG Chun-ying. I also hope that there will be a crisis of Tumubao as it would then be reasonable. After the discussions in this Council — the Secretary is not present today — he will personally do a headcount. When I left the Chamber a while ago, the civil servant very responsibly said, "Mr LEUNG, please remember to return", but I said, "I will not listen to you, please talk to other Members." The problem is that regardless of how seriously we debated today, the current system will not allow the passage of our amendments.

Chairman, I must express my views on other issues. I really cannot help talking about them. I would like to tell Yuk-man that the "replacement proposal" has caused the situation today. We have told the Government not to do so for it is unfeasible, but the Government has insisted on passing the Bill. As a result, the President has cut the filibuster and disallowed us to continue with the filibuster. One trouble follows another. In connection with the "five Secretaries of Departments and 14 Bureau Directors" proposal, we have told the Government again not to ……

CHAIRMAN (in Cantonese): Mr LEUNG, you have digressed from the question.

MR LEUNG KWOK-HUNG (in Cantonese): You also know that all analogies are shoddy. Will it be astonishing if all analogies happen to be the same?

CHAIRMAN (in Cantonese): Members should speak around the details of the relevant provisions in this debate, please focus your remarks on the provisions.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, thank you for your advice.

As the Government forces something on us, we do so in return. It is impossible for the Government to demand Members' full obedience. It will only make matters worse. I wish to say once again that if this meeting continues until

12 midnight, it is because of "five cadavers and 14 lives" …… I have not repeated myself. I am saying "five cadavers and 14 lives" ……

CHAIRMAN (in Cantonese): Mr LEUNG, you have digressed from the question.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I have digressed from the question.

Why will Members resist if the Government is not so insolent? Yes, I cannot digress from the subject. Chairman, under Rule 17(3) of the Rules of Procedure — I will not digress from the subject this time — at the Committee stage, the Chairman has the responsibility to do a headcount when a majority of Members are not present. I have not digressed from the subject this time. I am repeating what the book says.

Chairman, I have decided not to repeat myself. I report that I request a headcount.

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

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

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, please continue.

(Mr LEUNG Kwok-hung indicated that he did not wish to speak)

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

(Mr WONG Yuk-man rose and indicated his wish to speak)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, speaking for the third time.

MR WONG YUK-MAN (in Cantonese): Chairman, I would like to discuss Part VIA. I expressed my aversion to the opt-out mechanism when I spoke earlier on the opt-out mechanism and the opt-in mechanism. I would like to talk about keeping a record of a data subject's indication of his consent or no objection in Part VIA, which is a disputed issue.

We think that it is more satisfactory for a data subject to indicate his consent or no objection in writing but we sometimes need to take into consideration the actual operational needs of some industries and the need to strike a balance and promote business efficiency …… to be honest, I do not agree with this viewpoint. If there is a need to strike a balance, we will agree to make concessions if we take into account the actual operational needs of some industries and put ourselves in their shoes.

In making concessions — as the Privacy Commissioner for Personal Data has said — we should consider if a data subject reasonably expects his personal data to be resold to others when he provides his personal data to a data user. If the resale of personal data is beyond the reasonable expectation of the data subject, the data user must obtain the clear and explicit consent of the data subject. In that case, it will be more appropriate to keep a written record of the data subject's indication of his consent or no objection to the resale of personal data.

After the Bills Committee's discussions, we know …… I restate that I am not a member of the Bills Committee. So, I have no knowledge of certain things though they have been discussed by the Bills Committee as the Secretary has mentioned. As an elected representative, I am discussing and arguing about certain issues, and expressing my views on the relevant provisions basing on my general knowledge. Therefore, the Secretary should not refute my arguments this way. After all, we find it very strange that, in the discussion on the Government's amendment (especially Division 2) and Mr James TO's amendments at the Committee stage today, it seems as though all Honourable colleagues have taken a dumbing drug. Chairman, you will say that I am repeating myself again. My father always taught me to leave some leeway and

that I should not often offend people. He repeated that more than 90 times when he was alive and I disliked his nagging. Why could he repeatedly teach me so? I cannot help repeatedly ask, "What Members are these?"

CHAIRMAN (in Cantonese): Mr WONG, your father is not speaking at the Committee stage. Please abide by the Rules of Procedure and do not repeat yourself.

MR WONG YUK-MAN (in Cantonese): Am I speaking to you? I am speaking to the viewers watching live broadcast on television.

After the Bills Committee's discussions, the Government has accepted the views of Members and proposed amendments to categorize data users into classes. The first class is data users using personal data for direct marketing purpose; the second class is data users reselling personal data to others for direct marketing purpose. Chairman, do you understand the difference between these two classes? Other Members definitely do not understand that because they have not listened attentively; but, you should understand the difference for you need to point out if I have digressed from the subject or not as the Chairman.

The first class is data users using personal data for direct marketing purpose; the second class is data users reselling personal data to others for direct marketing purpose. The amendment permits a data user who intends to use a data subject's personal data in direct marketing for his own purposes to provide the data subject with the required information, and the data subject can indicate his consent or no objection either orally or in writing. If consent is given orally, the data user must confirm in writing to the data subject within 14 days from the date of receipt of the consent. This practice is proposed having taken the needs of the industry into consideration, which is a concession.

We, in principle, do not oppose this arrangement. Nevertheless, there will be technical difficulties in actual operation if consent is given orally. For example, can the data subject certainly receive the data user's written confirmation? We must say that, in accepting an oral consent, it is crucial if the data subject receives a written confirmation or not. What is the merit of a written confirmation? In case both parties have differing opinions on the oral

consent or no objection, the data subject will have the opportunity to make a prompt remedy. Yet, according to the arrangement in the amendment, it is not certain if the data subject can receive a written confirmation; thus, the arrangement is not satisfactory.

Moreover, under the proposed section 35E(4), a data user who contravenes the above provisions commits an offence and is liable on conviction to a fine of $500,000 and imprisonment for three years. This penalty produces substantial deterrent effects but the direct marketing industry has always had higher mobility and there will certainly be difficulties in enforcement. This penalty is just like a paper tiger that gives people a scare. There is a defence clause in section 35E(5), "it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence". Yet, section 35E has not defined the meanings of "reasonable precautions" and "all due diligence". These two terms are quoted from the provisions. Hence, enforcement difficulties will come as no surprise.

There will be problems with keeping a record of an oral indication of consent or no objection. There is no statutory provision in the Bill about audio recording and there is no corresponding provision about record keeping. Some Members have expressed concern in the Bills Committee but the Government has advised that "it would be in the interest of the data user to keep a record of the consent of the data subject, whether in written form or audio recording. Data subjects can also make data access requests to obtain copies of the relevant recordings under the Personal Data (Privacy) Ordinance". The Government does not accept the inclusion of a statutory provision on audio recording after all.

Another problem is that, on Division 2 mentioned above (Use of Personal Data in Direct Marketing), the Government insists that a data user should only resell personal data to another data user after he has received a data subject's written reply. This is a more reasonable practice. If the data user resells personal data to another person for direct marketing purpose, he must have the data subject's written reply before reselling the data subject's personal data to the object of the resale (another data user). As the additional requirement of a written reply gives the data subject greater protection, we find it acceptable and more reasonable.

We are discussing the Personal Data (Privacy) (Amendment) Bill 2011 today and our discussions are coming to an end. Theoretically, this Council should analyse in detail such an important Bill because the devil is in the details. We have fulfilled our responsibilities as Members but unfortunately a quorum is not present in the Chamber now. I request a headcount.

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

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

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, do you wish to continue to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, the buzzer …… how many minutes are left for me to speak?

I also want to talk about Mr James TO's Amendment 5 about the right to be informed of the source of their personal data by direct marketers. Let us take a look at section 35M in the amendment — it seems that Honourable colleagues do not have the amendment in hand for they are simply uninterested. On section 35M …… I support Mr James TO's Amendment 5 though it is very unlikely that the preceding amendments that he proposes will be passed. The premise of not passing the amendments is the passage of the Government's amendment. If the Government's amendment is passed, Mr TO's amendments will not have the chance to be passed, and my attempt to support him would be futile. However, we will not be so utilitarian and we should not stay here if we are so utilitarian. Thus, I will support Mr James TO's Amendment 5.

As to whether there is any chance for this amendment to be voted upon, the answer has already been written on the wall. We are just responsible for pressing the button to vote with our finger, and it does not matter even if we do not know how to speak or we are dumb. It also does not matter if our fingers are

paralysed for we can bite a pen and press the button with the pen, and we just need to vote when we see the light.

Under the regulatory mechanism proposed in the Bill, a data user only needs to inform a data subject of the class of persons to whom the data are to be provided, then he can transfer such personal data to a third party. He needs not inform the data subject again if the data is provided to a specified class of persons. Therefore, the data subject may not be fully aware of the transfer of his personal data and it is difficult for him to know whether the transfer is improper; that is why there are problems.

In section 35M "Data Subject may require data user to provide source of information", subsection (1) specifies that "If a data user has provided the personal data of a data subject to another person for that other person to use in direct marketing, the data subject may require the data user to provide him with the following information". I will not go through the list of information because the provision is very long and I would not like Honourable colleagues to think that I am filibustering. Yet, I am not filibustering and I ask Honourable colleagues to carefully consider the content of subsections (1), (2) and (3) because there are problems with the details.

Under the existing mechanism, a data subject does not have the right to require direct marketers to provide him with the source of his personal data. It is very difficult for the data subject to trace the irregularity of the improper transfer or sale of his personal data.

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

(Mr LEUNG Kwok-hung rose to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, you are speaking for the second time.

MR LEUNG KWOK-HUNG (in Cantonese): It seems that Mr James TO wishes to speak and I will let him speak before me because the amendments are proposed by him.

CHAIRMAN (in Cantonese): I cannot hear you.

MR LEUNG KWOK-HUNG (in Cantonese): I would let Mr James TO speak before me as he has raised his hand.

CHAIRMAN (in Cantonese): Mr James TO will respond after listening to speeches made by other Members.

MR LEUNG KWOK-HUNG (in Cantonese): In that case, I cannot let him speak before me because I should not shirk my responsibility. Sorry, I am not well conversant with the Rules of Procedure. Thanks for the instruction.

I think that there is a big loophole regarding the confirmation with data subjects. There are two ways to inform, namely to inform orally or in writing. To put it rudely, to inform orally means "to make verbal promises only", that is, when I ask you if you understand and you say you do, this is it. But the point is: do you have backup for that? Is there any third-party witness present? When a data subject is orally informed by a data user …… no matter which type, be it for direct use or transferring to others …… for the time being, I suppose that it is usually for direct use, otherwise he cannot transfer the data to others. When he informs in writing, everything is certainly put down in black and white which will serve as a basis for interpretation. Based on the literal meaning, one may know whether it is "take it" or "leave it"; "understand" or "not understand" upon reading it.

However, to inform orally is problematic as it merely means a person telling a story. Why I say so? I do not invent this. Think about this: something called "Lehman Brothers minibonds" in which many people invested their savings of a lifetime was said to be a type of bond but was nothing more than a "verbal promise". Chairman, have you ever heard about this? People tell you that by buying a type of bond, you will make lots of money while earning an interest at a rate of 2% and need not pay any money even if you lose. Back then, they told people that it was a type of bond which would not sustain any loss. Buying in this type of bond would earn 2% more of interest than investing in other bonds or keeping savings in the bank. Most elderly ladies did believe so.

When this Council conducted investigation back then, we asked them if they had any backup or made any recordings. Most of them answered in the negative.

Drawing reference from the above example, given that Hong Kong people do not care much about their own privacy, how will they respond upon being asked, "Now I have your personal data on hand, will you oppose if I continue or let persons of certain classes to use such data?"? The other party has got very fine facilities and there are different categories. He may put to you: "Will you allow coffin shops to use the data?" "Damn" will be your answer for sure. But when he asks: "Will you allow a certain television station to use it?" You will certainly agree to it, right? That is the point. It is utterly a trap. When a data subject is being enquired by a data user, no matter a primary or a secondary user — if 10 categories are designated under the current legislation, for example, entertainment, dining, gambling, which refers to horse-racing and is always there, health and healthcare — most people will say "yes" or "fine" on hearing the term "healthcare". Yet, it will be another matter when they give you calls where the caller will only keep on persuading you to procure insurance policies which are claimed to be related to healthcare.

Regarding this issue, when giving permission to data users of whichever level for using your personal data, you make this demand: "You have my personal data on hand but I want you to list the 10 categories you have picked one by one." Given such a rough categorization, the other party can miraculously reverse the situation in most cases. There are many businesses related to human life, such as sale of booster tonic, health check-up services and even coffin shops. What should we do then? Take myself as an example, suppose that a coffin shop phones me one day while I am at a meeting here and says to me, "Mr LEUNG, $8,000 for a full package." If I say to him, "Buddy, I am willing to receive such calls only because I was told last time that those are businesses related to human life." When I want to revoke my consent, he will only say, "Buddy, you had already made a promise last time I asked you."

Chairman, for argument's sake, I can tell there exists a rather big loophole without being warned by my father. What is it called? It is a typically misleading tactic employed to over generalize the situation. Therefore, if the Government really means to press ahead with such a practice, it should provide an elaboration in the Schedules. Be there 10 or 12 categories, if these sectors are to be categorized …… even though they are categorized as you wish, say, you

want them to be divided into four categories and they are so divided, but the specific details of the four categories must be clear enough. Otherwise, as to the victim who has already fallen victim to …… if someone goes on to ask him, "Can I continue using your personal data? I am the direct data user and will never transfer your data to others. So now, would you please make up your mind and select from the 10 categories?" This is not be a suitable approach to take because if you tell people that you are not the direct data user, people will become so cautious and regard you as some sort of salesman.

The point is, however, it is still not preferable since neither is there any appropriate categorization nor a Schedule to provide an explanation throughout the course of legislation.

Furthermore, another problem will crop up if there is no backup for the data subject's being informed orally, meaning that the data subject can only rely on a sole record. Or it can be put this way: the law only requires the data user to make a record. Frankly speaking, Chairman, considering the many phone calls we receive in a day, will I …… you will not tell your secretary something like "that person has called me and you make a record of this". You will not do so and neither will I. In a nutshell, the data subject will not have any backup in respect of his being informed orally. On the other hand, the data user needs not inform the data subject of the backup he has got — except that a letter should be issued to the data subject within 14 days requesting his confirmation of the oral consent made. Actually, it is stupid to make such a confirmation as this means "I indicate no objection or consent." Well, what is the difference between "no objection" and "consent"? It is a mind game, I tell you. "No objection" is similar to our abstaining from voting, which will finally lead to the Crisis of Tumu Fortress, right? It only means that I do not object to you. However, it will pose a different psychological barrier if that person is required by law to give an explicit consent.

Thus, when data users are conferred by law an overwhelming power in this regard, I do not see any protection for data subjects upon enactment of the Bill. Someone tells a data subject, "I have your personal data on hand." The data subject asks in return, "How did you gain it?" That person replies, "It is already stipulated in the law that I need not tell you and you need not ask." That person then asks, "Would you like to let me continue using your personal data?" The data subject responds evasively. If I were that person, I would ask, "Do you

mean you have no objection by speaking evasively without giving any affirmative response?" If the data subject says "yes", it is all done. Therefore, it is crucial to make confirmation within 14 days, which should be made in a more prudent manner. It is because if the first level of gate-keeping is defunct, there is no second level of gate-keeping in the law. What kind of safeguards can be secured by seeking confirmation within 14 days? How should it be done? How to back up?

So, concerning this issue, I opine that when the first level of gate-keeping becomes defunct, concrete safeguards should be provided in the next level so that data users will understand, that is …… Chairman, I wonder if you have watched those lottery game shows before …… one, two, three, four, five, six, but the lottery results are subject to the such and such rules of our club …… which being the way it should be, actually. As the importance of personal rights and privacy has been downplayed while it is possible for a data subject to be misled in the arrangement for the first notification made orally or in writing, the final right should be reserved for the data subject to reverse the case according to his own will instead of any other person's.

Chairman, is this approach barbarous? I do not think so. Since disaster will come unexpectedly, say, my personal data will all be disclosed upon one swipe of my Octopus card. Why that the data subject is not given any compensation throughout the course of legislation? What should his final right and all related matters base on? They should be subject to the choice of the data subject. All disputes should be subject to the discretion of him, meaning that he does not bear the responsibility to inform an arbitrator likely to emerge in future of the reason for his choice. In that regard, the data user has to explain either orally or in writing why there is such a discrepancy.

Actually, it is so simple. If our Government chooses to go ahead, it only has to make …… how do we call that …… a data user, no matter if he is a primary or secondary user, the one to bear all the costs incurred in creating a backup, providing proof and launching investigation. It is so simple. Why not let the market mechanism function? What is the point in incurring excessive costs for something as insignificant as a shoe lace? Say, I drop a shoe lace outside the Chairman's room. Well, if you pick it up but find that all your wealth is gone the next day, you will certainly not do so. Thus, regarding this issue, what really matters being that under the mechanism established by the

Government, any losses suffered by data subjects should be borne by data users since our society has become an unjust one in which our personal data is abused for data trading. It is like taking legal proceedings. I have to pay $200,000 if I lose. It should be like this, right? This is called "being beaten with a plank for thirty strokes before seeing the official". However, if an official has to suffer the same torture before he can meet the populace, do you think he still dares to exploit them? If one has to suffer the same torture before he can pay visits to local districts, do you think LEUNG Chun-ying will still proceed with his visits to local districts bringing along a pen and a stool with him?

It is so simple but I just cannot figure out why that data subjects, people as innocent as you and me, have to be placed in such an unfair position in the entire process. Chairman, I must reiterate that I am strongly against this. Many people may query if I do not want them to do business. On the contrary, I want to ask them if this is the way of doing business then. Does doing business mean to sacrifice the privacy of others? So you think that for business's sake, the Government should allow you to keep on collecting personal data for abuse even after certain shortfalls or loopholes are identified; so that you can continue to use the personal data of others by means of deception which is hard to verify? Is this the proper way to run business? Are we supposed to improve our economy by deceiving our fellow citizens instead of foreigners?

Chairman, I cannot help making a few more remarks regarding this issue, alright? Chairman, my father always teaches me this: "Anyone who offers unsolicited hospitality for no apparent reason is either a crook or a thief." I know that the Secretary will not speak here today, but the problem remains: we had been offered such an unsolicited hospitality as "buy 10 and get one free and so and so", but all our personal data were elicited for gain upon one swipe of our cards. Now, the "rubber stamp" is getting into the way again when the offender has to surrender the benefits it gained therefrom, claiming that deception is inevitable in doing business. Let me tell you: deception is not inevitable in doing business and neither is the case of adding unauthorized building structures by the Chief Executive. Despite that two of the Chief Executive hopefuls are involved in cases concerning unauthorized building structures, that does not mean subsequent Chief Executive hopefuls should also get involved in such cases.

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

MR CHAN KIN-POR (in Cantonese): I will make a brief response to Mr James TO's speech. Following the Lehman Brothers' minibonds incident, the Government has advised banks to keep audio records. Making audio recording presents an alternative other than keeping written records for members of the public in case they need to access the records of proceedings for what was said by the subjects and what was conveyed in the replies. Audio recording provides a clear record which is very useful for identifying the offenders.

All along, direct marketing transactions across the globe have been done on the phone. As direct marketers usually operate in a small scale that the monthly turnover of a direct marketer may be as small as a few hundred dollars, most of them adopt this mode of trading. They have to adopt a simple mode of operation in order to promote particular products among targeted customers. It is not a practice specific to the direct marketing industry in Hong Kong but the entire world as well. According to information provided by direct marketing organizations, only Germany has started not to use the "opt-out mechanism". Thus, Members should now understand why we have digressed so much during our discussions then.

To set Members' mind at ease, I will explain what the "opt-out mechanism" dubbed by the Government means. It means a column indicating no consent is present in the document. Ms Cyd HO expressed her worry just now and disagreed with the wording. Regarding this issue, the Government has already stepped up its regulation to ensure that in future, a data user cannot use a data subject's personal data for promotional purposes if the data subject has picked the "no-consent" column and so he needs not take an extreme step of terminating the service concerned. The consumer can choose to continue using the service if he likes it and refuses to let his personal data be used for promotional purposes once he has picked the "no-consent" column.

Why that an oral consent is proposed as many businesses have been providing their clients with a "no-consent" column in their documents? This mode has been in practice all over the world given the small turnover of some industries and the low risk involved. Moreover, clients can cancel at any time their transactions by phone. Thus, the Government has made such a proposal to

provide additional safeguards. I truly hope, as I have said before, that Members can understand the rationale behind the move without worrying too much. In fact, such transactions are safely done numerous times. According to my knowledge, such transactions come in tens of thousands for the time being. Among the hundreds of thousands to millions of transactions done every year, cases involving clients' denying their verbal consents are only of an insignificant number. These transactions have been backed up by digital audio recording for easy access and not any dispute between direct marketers and their clients has been reported over the past.

Of course, I understand Members' worries as well as Members' wish of safeguarding consumers. However, has the situation really become so critical? I hope Members will understand that our discussions with the industry are now in progress so as to guarantee safeguards for people concerned. I wish to make it clear that we do not mean to force through the proposal, anyway.

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

(Mr LEUNG Kwok-hung rose)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, do you wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Since the Council is at the Committee stage today, I think that a headcount request should be made pursuant to Rule 17(3) instead of Rule 17(2) of the Rules of Procedure.

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

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

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

(Mr WONG Yuk-man rose to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, speaking for the fourth time.

MR WONG YUK-MAN (in Cantonese): Regarding the fifth amendment proposed by Mr James TO under which direct marketers are required to inform data subjects of the source of their personal data, the source of information talking about here will improve the inadequacy of the Amendment Bill.

Talking about providing the source of information, the press is doing quite the opposite. We sometimes have to withhold the source. I have worked as a journalist for years. I was often invited by senior government officials to attend press briefings, in which we had a consensus that the discussion would not be made public. The jargon we use is "off the record". In other words, even if Michael SUEN invited you to tea and handed you some information for publishing, you would only state in the news that the information came from a source close to senior government officials. Withholding the source has a very negative impact on the credibility of a newspaper.

But the press has to abide by the secrecy rule. If the source has to be protected, the press would do anything, even going to jail, trying to withhold the source. Many examples can be found in the United States, where the press is regarded as a messenger. In Hong Kong, there was a case in which the Independent Commission Against Corruption searched a news agency and requested a reporter to disclose the source of information to facilitate its investigation ……

CHAIRMAN (in Cantonese): Mr WONG, this is already your fourth time speaking. Is what you are talking about related to this clause?

MR WONG YUK-MAN (in Cantonese): Certainly. The amendment concerns obtaining the source of information, conferring on data subjects a right to be

informed of the source of their personal data. And what I said serves as a comparison, which is very important. People in general think that the source of information should be protected, rather than disclosed. How come this is not related to the clause? Chairman, I am surprised that you are not that experienced and knowledgeable after all.

Under this amendment, direct marketers are required to inform data subjects of the source of their personal data and data subjects are conferred this right to know. We consider that the amendment will, in effect, strengthen the enforceability of the Personal Date (Privacy) Ordinance and curb illegal transferring of personal data.

What I just said is certainly related to the amendment. I was making an analogy, but Chairman, you said that I digressed from the subject. I have only spent one minute on the analogy for Members' reference.

CHAIRMAN (in Cantonese): Mr WONG, do not digress from the question again.

MR WONG YUK-MAN (in Cantonese): It has been proposed by Members at the Bills Committee that data subjects be conferred the right to be informed of the source of their personal data by direct marketers. But the Government was concerned about the proposal, saying affectedly that it might cause inconvenience to small and medium-sized direct marketers. It turns out that the Government formulates a law only for the convenience of direct marketers. It is really awkward.

Actually, some major direct marketers do not strongly oppose the proposal. To put it plainly, "the eunuch is now more anxious than the emperor". Associations of the direct marketing industry, the banking sector and the insurance sector support or do not oppose conferring a right to data subjects, so that they can directly enquire direct marketers about the source of their personal data, making it possible for them to trace the people who have improperly transferred or sold their personal data. The Administration on the one hand prohibits the improper use of personal data, but one the other wishes to facilitate the operation of direct marketers. How is this possible?

Just now, Mr CHAN Kin-por has spoken for three minutes. He is the first pro-establishment Member who has spoken today. He spent three minutes, three whole minutes to speak, trying to address our concern. I commend him highly. Other pro-establishment Members — What are you laughing about? — have all kept their mouths shut as if having taken a mute drug.

This amendment will not add to the costs of direct marketing. Why does the Government oppose it? What is wrong with this amendment of Mr James TO's? Amendments proposed by Members are always opposed by the Government. On what conditions will the Administration be willing to support our amendments?

Chairman, I can hardly recall such a case in my memory. Amendments proposed by the royalists may be easier to gain the Administration's support because a prior consensus has already been forged between them. Recently, the Federation of Trade Unions and the Democratic Alliance for the Betterment and Progress of Hong Kong called on LEUNG Chun-ying to dish out some relief measures to divert public attention. Hence, when LEUNG Chun-ying dishes out the sweeteners after taking office, they can take the credit and publicize that they has successfully fought for these measures. They would employ such a trick again to canvass for votes. This Council and the political arena in Hong Kong are really a total mess.

As this amendment will not add to the costs of direct marketing, the Government basically should not oppose it. Why do data subjects not even have the right to enquire after the whereabouts of their personal data? This does not make sense. The Administration allows the transfer of personal data, but data subjects are not informed of the whereabouts of their personal data. Companies are not prohibited from transferring personal data for profits, but these companies should at least inform data subjects of the source of their personal data. Am I right? The example about the source of the news, which I just cited, is quite the opposite of the case in this amendment. Do you get it? The example drives home the importance of protecting the source of the news, but the source of personal data should be disclosed to data subjects. There is an obvious difference between the two.

Hence, we must support section 35M "Data Subject may require data user to provide source of information" in Mr James TO's amendment. But, as I just

pointed out when I talked about this amendment, we do not even have a chance to vote on it. What should Members do in this Council? What is the purpose of proposing amendments by Members? Under the Rules of Procedure, Members or this Council is vested with the power to propose motions, private bills as well as amendments to Bills. It is because there stands a chance that the Government may have replaced something right with something wrong. It is our duty to perfect the law. Right?

However, this is not the case now. Members' amendments are always opposed by the Government and the royalists. What kind of a council is this? Members can simply stop proposing legislative amendments altogether. Just let the Government introduce all the motions. We can just regard ourselves as a rubber-stamp or voting machine and process them ritually. This will save a lot of time. Why bother to go through all the troubles? Why bother to speak till exhaustion here? I have totally spent two to three hours on discussing this Bill about privacy. Why on earth do I have to speak till exhaustion? Even if I do so, I will not be able to better defend the truth or perfect the law. Why do we have to set up a Bills Committee? Why do we have to propose amendments, carry out debates and enter into the Committee stage to discuss them? Now, if we say a little more, we will be criticized for digressing from the subject and repeating ourselves. Members should best remain silent in this Council.

Chairman, Mr James TO's amendments are very constructive. Nevertheless, some Members will veto them. The opposing Members should at least state the reasons for vetoing the amendments. Will Honourable Members sitting here explain why they oppose the amendments? As they will definitely cast vote against the amendments later, will they please tell us why they oppose them? Actually, they may not even have the chance to vote on these amendments. Chairman, this is only what I predict. I believe the Administration's amendment will definitely be passed. If so, Mr James TO's amendments will not be put to vote. Am I right?

Hence, will they please explain to the people of Hong Kong? They are supposedly the representatives of the people. Although Members returned by functional constituencies only represent the views of a small circle, they should still reflect public opinions. Am I right? Who are they representing now? Whenever we have done something slightly overboard, they would immediately criticize us. We have done our part as Members to speak on the amendments,

but none of them have responded to our views. Chairman, may I say it one more time, the debate on the Bill at the Committee stage today makes me blush with shame. It is a disgrace to this Council. I have nothing more to say.

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

(Mr LEUNG Kwok-hung rose to indicate a wish to speak)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, speaking for the third time.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, why do I speak? Because I have to find out why my privacy data has been in the hands of others. This is a very important right of mine.

This is the Legislative Council. What is the essence of the rule of law? It is to protect the basic rights of an individual. Certainly, people have a right to do business, but it is not a basic right. This is self-explanatory because wage-earners, who account for the majority of the people, will not do business. That is why the right to do business should not override the basic rights of an individual.

Regarding the spirit of the Bill, the Government told this Council that such a practice would deal a great blow to the small and medium-sized direct marketers. Actually, I think not even Yuk-man sees this point. It means that bankers or the ultimate consumers (who are in a large number) will say it is all right because they want to be the good guys. Do you think the banker of HSBC will come out and voice his views? He is a man of prestige; he certainly will not do so. But we all know that there will be no queen bee if there is no worker bee. Without the worker bees and soldier bees carrying the honey back to the honeycomb, what is the queen bee going to eat?

Hence, those always talk about traditional virtues, or those always wear a tie …… sorry, you wear a tie today and are not dressed in your Zhongshan suit ……

CHAIRMAN (in Cantonese): Is what you are talking about related to the relevant clause and amendments?

MR LEUNG KWOK-HUNG (in Cantonese): …… In brief, those immaculately dressed say it is all right and the source of information can be disclosed casually. It is because they are not the one selling the data. The source of information is usually those selling data to them. Let me explain to Mr WONG Yuk-man. He has wrongly blamed the small and medium-sized direct marketers and does not understand why the honchos say it is all right. Although the honchos rely heavily on personal data for their business, they do not object to disclose the source of information because they are not the one selling it. An exception is the MTR Corporation Limited which is an extreme case. Well trusted by people in society, it is unforgivable for having sold its clients' data as part of its business. So, regarding this point, Mr WONG should not blame the wrong party. Those always talk about traditional virtues will certainly say it is all right and uphold this value.

Next, let us consider whether it is right to sacrifice the basic rights of an individual for the convenience of business operation. I think it is really not right. First, assuming that my personal data has been used by the Government in the name of public interests, I can now take the matter to the court, demanding the Government to answer whether it has used my personal data. I can do this; and I still remember the incident all those years ago in which I sued the wrong party.

A government is an authority which represents public interests, whether or not this authority has gone through a legitimate election. It will also be challenged by members of the public over whether extreme means have been adopted in obtaining their personal data. For instance, I can be under surveillance by the Government, but it should not tap information about my dating. When I ask the Government, it can reply, "'Long Hair', will you take part in the protest?" That is fine.

Looking from this perspective, a citizen can sue the Government, or request the Office of the Privacy Commissioner for Personal Data to enquire whether the Government has used his personal data, how much data has been used and whether he can have access to such data. I really do not understand

why "for the convenience of business operation", which is such an insignificant interest, can override the Government which represents public interests. I really do not see why.

Members of this Council often say that they need to do something for the small and medium-sized direct marketers, but these direct marketers have resorted to unscrupulous means to make a living. Members who have strived to defend the interests of the small and medium-sized direct marketers and oppose putting regulation on them are actually lowering the costs of those who heavily use personal data for self profits. Is this justified?

Yuk-man has cited an example in which a media agency strived to protect the source of information. Actually, he needed not cite this example. Yuk-man, you are really outdated. Just recall how fearless LEUNG Chun-ying was when asked to provide the names of the lawyers or the professionals, saying "I will take all the responsibility. I will not tell you the names". This is the best example. How righteous and reverent he was when he refused to disclose the names.

Hence, regarding this issue, you cannot blame us for repeatedly expressing the same view here. In fact, if we do not talk about justice and the rule of law in the legislature, it is a waste of our energy. What is the logic today? It is the "killing of the mother in the name of the father". I have said many times that because of the need to take care of the disadvantaged groups, we ……

CHAIRMAN (in Cantonese): Mr LEUNG, as this is the third time you speak, do not repeat what you have said many times. Besides, a lot of your remarks have digressed from the question.

MR LEUNG KWOK-HUNG (in Cantonese): Yes.

CHAIRMAN (in Cantonese): Please speak on the question and do not repeat yourself.

MR LEUNG KWOK-HUNG (in Cantonese): Fine. I will not repeat myself. Then, I agree with Mr James TO. I agree with him. Is that all right? It is all right, is it not?

So, regarding this issue, I really do not understand. Mr CHAN Kin-por is an upright person. He is the only one who said, "The whole world is doing this. They all do it in an ad hoc manner." He has pointed out one problem, but what I am saying now is another problem. That is, on what grounds does the Government convince this Council not to vote to protect the basic rights of a citizen? Even the Government can be challenged by the public over the data it has obtained. This is really illogical. Hence, I cannot but agree with Mr James TO.

If we look at the issue the other way round, we can then see very clearly what is at stake. Chairman, if the proposal under discussion today aims to protect the interests of the small and medium-sized direct marketers and facilitate their business operation, but, in the coming nine months, these direct marketers transfer their clients' personal data to another larger profit-making corporation, then, why do we have to make this decision today? These profit-making corporations are making fat profits new.

In my opinion, this Ordinance will definitely prove that power unused will be pre-empted. In other words, direct marketers which have run into operation difficulties and engaged in direct sale of personal data will be eliminated in these nine months. That is why I do not agree with Members who said today that assistance should be rendered to the weak and vulnerable direct marketers. They support curbing honchos but giving a way out to small business operators, citing the reason that if the latter wind up their business, those working under them will be unemployed. This logic is absolutely untenable. I wish to listen to the views of other Members to see if they can change my mind to support them. I certainly hope so, but regrettably, they cannot change my mind.

Indeed, it is very difficult for us to amend bills introduced by the Government. Members cannot propose amendments concerning public expenditure; nor can we propose amendments concerning the operation of the Government. As for amendments concerning government polices, we have to obtain the consent of the Chief Executive before such amendments can be introduced. I have lost a lawsuit on this and ended up paying several hundred

thousand dollars. The amendments proposed by Member today have no impact on the operation of the Government but still the Government does not allow them to be passed. I thus find it very unfair.

Chairman, why do I have to take great pains to make this point clear? If the Government considers that Mr TO's amendments will have an impact on the people of Hong Kong, the amendments must involve the operation or policies of the Government. And if the amendments involve public expenditure, it will be very obvious for us to see. In other words, if Mr James TO's amendments cannot pass these three major hurdles, he can call it a day. If the amendments can pass these three major hurdles, they will not give rise to any cost.

Maintaining the original arrangement will also not give rise to any cost, but it has an impact on human rights or the basic rights, as it will victimize tens of thousands of daily MTR commuters, such as people like me. What grounds does the Government has? Given that it is expressly provided for in Article 74 of the Basic Law that the Chief Executive can turn down Member's amendments if they are against the interests of Hong Kong people, then what else? Are the amendments frivolous?

According to Mr CHAN Kin-por, if the source of information has to be disclosed or some other changes have to be made, it will have a negative impact on our economy. If so, the Government will definitely not support Mr TO's amendments. If an epidural offers pain relief during labour, why not having a baby? So, this problem is, in fact, self-explanatory. Chairman, perhaps you find us very annoying. Actually, I also find myself very annoying, but we cannot help it.

May I now solemnly ask other Members again — I will not ask the Chairman because he cannot speak on the subject — If Mr James TO's amendments do not affect our economy and the Government does not oppose them, what reasons do Members have for not supporting the amendments which seek to restore the basic right to the people of Hong Kong? People are entitled to this right, not even the Government can deny it. But today we are going to enact a statutory law to tell people they do not have this right.

In my opinion, if the relevant clause is passed, it is tantamount to turning the five Confucian relationships upside-down. I wish to ask again. The

Government cannot dodge this responsibility …… That is, no matter how a data user has obtained the personal data of a data subject, the data user is subject to the query of the Hong Kong people. If the data user refuses to disclose the source of information, or if the disclosure leads to other consequences, the data user will be brought to justice. But why would this Council pass a statutory law which will forego the chance to pursue the responsibility for what they did in the past? Chairman, you have to understand that if we let bygones be bygones, it will be gone forever.

Frankly, I was only passing by the Chamber just now. However, having listened for some time, I really think the debate has gone overboard. Chairman, I know you think that I am repeating myself, but I have to tell you that the earth is oval. This is a long-established theory. The sum of the angles in a triangle is 180° (unless you are talking about non-Euclidean geometry). This is also a long-established theory. You have been a teacher for a long time and you will not give up teaching. Thank you, Chairman.

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

DR MARGARET NG (in Cantonese): Chairman, I wish to respond to the two questions raised by Mr WONG Yuk-man just now. The first question is: why should Members still propose amendments knowing that they will not be passed anyway? Regarding the amendments proposed to the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill) by Mr James TO, we are aware and as Mr James TO has said, motions proposed by Members will not be passed in this absurd Council under the absurd visions of the Government.

Chairman, you may still remember that the Government held a different view from that of the Committee on Rules of Procedure in respect of the interpretation of motions and whether Members had the right to propose amendments. At that time, the Government opined that we Members did not have such a right but there was nothing it could do to stop us since it could not interfere with the formulation of the Rules of Procedure. Thus, it has resorted to taking a negative approach to veto all motions proposed by Members.

Chairman, why do we still go ahead to propose amendments knowing that they will not be passed? There are at least two reasons. First, we propose solemn and practicable amendments to rectify issues we consider wrong in the bills introduced by the Government. This is in line with the Rules of Procedure. The speeches as well as the amendments we make today will be officially recorded in Hansard which everyone can see later that there indeed have alternatives. For instance, amendments had been proposed by Members to section 8 of the Prevention of Bribery Ordinance but were negatived back then. Subsequent events proved that the relevant amendments should have been passed, which would help save some recent scandals from happening.

The second reason: it is similar to the situation when the Interception of Communications and Surveillance Bill was under discussion years ago. We pointed out the unjust and imperfect parts of the Bill through proposing amendments, thus forcing the Government to respond. If the Government did not make any response, then history would tell that it had run out of any cogent arguments.

Chairman, perhaps such actions will not generate any immediate and practical results, but we mean to fulfil our responsibility for righteous causes. We propose amendments because we have reasons to do so and we will not do so for nothing. Hence, I believe that today, Mr James TO has proposed the amendments out of one of these reasons, which deserves respect by this Council. This is the answer to Mr WONG Yuk-man's first question about why we have to propose amendments.

Secondly, Mr WONG Yuk-man questioned why Members did not speak on a bill which is so important. Chairman, I have not spoken on this Bill because Members only have limited time. Since I did not spend time on scrutinizing this Bill, I have to rely on other colleagues of this Council to scrutinize it. Basically, I will rely on the Bills Committee's report to gain an understanding of its content and try to figure out the purpose of Mr James TO's amendments before deciding on how to cast my vote later. Therefore, I have not spoken on this Bill not because I find it unimportant or the amendments proposed by Mr James TO meaningless. It is just because I hold the view that I should let other Members speak on the Bill instead.

Chairman, another reason is that I am waiting to speak on many other Bills, such as the upcoming Legal Practitioners (Amendment) Bill 2010. I have been waiting for so long. Chairman, time and again that bill is still not under discussion. That Bill is of great significance to both the legal service of Hong Kong and my voters I very much wish to speak on its relevant issues. So I am waiting to speak on it. Likewise, I am also waiting to speak on some important matters concerning the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012. Chairman, regarding the Immigration (Amendment) Bill 2011, I am also waiting to speak on it as I have proposed an amendment which I consider important.

Following the conclusion of this Bill, we will examine the Residential Properties (First-hand Sales) Bill. Chairman, I am afraid I will also not speak too much on that Bill. It is neither because I have no respect for it nor do I find it unimportant. It is because that Bill has been taken care of by other Members. And I do not have much to add to it.

Chairman, I have listened patiently to speeches made by other Members in the course of scrutinizing these Bills, but I do understand that time is rather limited. I have not spoken on this Bill because I am waiting patiently. I hope that there will come the time for the resumption of debate on those Bills which I am much concerned about. I will have the opportunity to speak then. This is my response to Mr WONG Yuk-man's speech.

Thank you, Chairman.

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

MR WONG YUK-MAN (in Cantonese): Thanks for the response made by Dr Margaret NG just now. I have a rough idea about Members' purposes in proposing amendments but thanks for her elaboration. In fact, this reveals how crippled this representative institution — legislature — is.

Regarding my criticizing some Members for not making any speech, I think that Members do not wish to drag on with the Bill for too long at the present stage in order to make it possible for other Bills or the resolution of five

Secretaries of Departments and 14 Directors of Bureaux to be discussed at the meeting to be held on 11 July. We agree that the Bills in the queue pending discussion are of great importance and so the Residential Properties (First-hand Sales) Bill can jump the queue. Of course, we also understand it is due to the fact that Secretary Eva CHENG will have to go home to take care of her kids upon the expiry of her term of office on 30 June and it will be unreasonable to let other Secretaries take her place. At present, we do not know who will be the next Secretary for Development or Secretary for Transport and Housing. The situation is chaotic.

Nevertheless, we have to keep on speaking as only very few Members have spoken on the Bill. This seems to be very disgusting but in fact, our speeches have targeted on the content of the clauses of and amendments to the Bill. Anyone who disagrees can rise to speak but no one does so. Why? That is exactly what I have queried. Now that people are swiftly bringing down the curtain and maybe some of them do not even hear. Are we now at the year-end that everyone is in great haste to wrap up everything? The meeting will extend for two more hours and the Chairman has even proposed to have overnight meetings on 7 July and 8 July. So let us have the meeting together then and see who will collapse first. I do not mind.

Regarding Amendment 5 proposed by Mr James TO, I find it worth our support. Of course, I have hinted on the result earlier on. However, should the process not exist because of the result? Should we stop speaking?

Chairman, a quorum is not present.

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

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

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please continue with your speech.

MR WONG YUK-MAN (in Cantonese): I have not yet spoken in detail in respect of Amendment 5 proposed by Mr James TO. The amendment deals with the source of information. As the data needs to be transferred, it is necessary to inform the data subject of the importance concerned. The direct marketer is required to tell the data subject from which source his data is acquired.

There is a new requirement under the Bill where the data user must first seek the data subject's consent before providing his personal data to others for the purpose of direct marketing. However, owing to the presence of the grandfathering arrangement in the Bill, data users can keep on using the data previously bought. The Octopus incident has clearly illustrated this point. Hence, it has been made clear in Mr James TO's amendment that he hopes the data subject can trace the source of data and demand according to the new requirements of the Government the source to cease to provide his data or even require the source to notify other parties having acquired the data to cease to use the data. It is because there may be many other bodies or institutions can do so. This is to provide some sort of safeguards.

Thus, sections 35H and 35M provide a clear stipulation in this regard where the former even mentions the sources of information and contact methods. The direct marketer has to issue a written statement to the data subject within 14 days if he is not able to provide the relevant information. This helps make up for the inadequacies of relevant new requirements under the Bill. Therefore, the amendment proposed by Mr James TO is worth reconsidering by the Government although it will definitely not do so. We must proceed with the discussion on such details here as informing the data subject of the source of information is of utmost importance.

Should the Government's amendment be passed, there will be no way to put to vote the amendments proposed by Mr James TO. There may not be enough Members if we do the headcount now. It will be fine if certain Members do not turn up. I hope Members will render support to Mr James TO's amendments later in the voting.

Chairman, this is the end of my speech.

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

(No Member indicated a wish to speak)

MR JAMES TO (in Cantonese): Chairman, I would like to briefly make a few points.

First, as I have said earlier, my five amendments are divided into three groups: Amendments 1 and 2 are in the same group, Amendments 3 and 4 are in another group while Amendment 5 belongs to the last group. I requested you to permit voting separately on my amendments but you turned down my request in the end. Even though you have given certain reasons for your decision, I am not quite satisfied so far. However, I will not repeat my viewpoints and I just wish that other Members would know that I have requested voting separately on my amendments. Why? Now that there are three groups of amendments of different nature, voting separately will make it easier for this Council to vote on different kinds of amendments, which will accurately express the wishes of Members.

Second, I would briefly respond to the comments made by Mr CHAN Kin-por. He thinks that there is no problem for consent or no objection to be orally indicated when audio recording is made because this has always been the practice adopted by organizations such as banks. I am commenting on this point because I wish that my opinion could be put on record. In spite of the fact that I have expressed similar views at the Bills Committee meetings, as many Honourable colleagues are not members of the Bills Committee, they may consider Mr CHAN Kin-por's comments as reasonable because oral consent seems to be well-founded. However, I can make a few points to prove that there are deficiencies in giving consent orally.

First, there is no rigid legal provision for audio recording. Mr CHAN Kin-por's presumption is that there is audio recording but only some data users may be doing so because there is no legal provision for audio recording. I have asked the Government to provide for audio recording as this will at least be closer to my idea, but, the Government agrees with the views of small and medium enterprises (SMEs) that audio recording incurs high costs. If there is no audio recording but only a verbal statement, a lot of disputes will be caused.

Second, even if there is audio recording — I assume there is audio recording though there is not any mandatory requirement and there is just audio recording by direct marketers of their own accord — there may be some problems, and the following examples will make it easier for Honourable colleagues to understand the situation.

A written record can set out all the relevant details clearly while audio recording requires a direct marketer to read out various terms and conditions. Assuming that there are five terms and conditions. When the direct marketer reads them out one by one, these terms and conditions will be explicitly recorded, and it can be proven that he has read them out. But, how about the listening party? We often say that direct marketing telephone calls are a nuisance. Sometimes, we may be walking on the street when we receive these calls on our mobile phones or when we are in a noisy environment or places where phone reception is poor. For example, mobile phone reception is less clear on the ground floor of the Legislative Council Complex where we get out of the car and it is a bit clearer when we are in the lifts.

There will be problems under the circumstances above. I may hear it when a direct marketer is reading the first and second terms and conditions but it may so happen that I cannot hear it when he is reading the third and fourth. While he is reading the fifth, I may think that he is reading the third. I will then be asked me if I consent to the terms and conditions. If I wish to be nice to people, I will give consent because I think that I have heard all the three. Nonetheless, I have actually only heard the first, second and fifth, and I do not know that I have not heard the third and fourth. It will be too bad because there will be audio recording of my indicating consent or no objection and I cannot try to defend myself. Therefore, audio recording has such a deficiency.

According to Mr CHAN Kin-por, providing for audio recording will cause the closing down of SMEs, which is not really feasible. Besides, small transactions of direct marketing are often carried out verbally at present. I really do not quite understand this point. How much additional cost will be incurred if a company invites a data subject — I call him a client — to give a written reply in the form of a reply slip or an email? How heavy is this cost as compared with such costs as the rents or the minimum wage of $28 an hour? If a direct marketer set up made audio recording and set up the relevant equipment, how much additional cost will sending emails incur? Moreover, if consent is sought

in writing, it will not be necessary to make audio recording or purchase audio-recording equipment. I really do not understand his argument.

Alternatively, a direct marketer may offer an incentive. I definitely do not wish to repeat what happened in the Lehman Brothers incident. At that time, clients who carried out transactions involving several hundred thousand dollars were given supermarket coupons. However, even if I have provided data to a direct marketer, I have the right to ask him to stop marketing his products. I also have the right to give him a chance to market his products and cause me nuisance in exchange for petty benefits, regarding such benefits as "nuisance fees". If I am unemployed or I am earning the minimum wage of $28 an hour while a direct marketer who keeps calling me to market his products offers to pay me wages at $28 an hour for me to listen to his direct marketing promotion, I might as well accept the offer. I still have the final say in buying the products or not. This market transaction is very reasonable. When I visited the Disneyland in Miami in the past, I willingly spent an hour listening to a salesman promoting some local properties so that I could save US$50 on an admission ticket and I also had a free buffet. Of course, I did not buy any of those properties but I saved US$50.

Concerning the direct marketing approach of giving special offers or small gifts in exchange for a written consent, it should be noted that a customer is not committing himself to a direct marketer but just selling the direct marketer an opportunity for occasionally causing him nuisance or wasting his time. Furthermore, time may not be something very important to some people, and they may be willing to give consent for certain benefits. When the direct marketer promotes different products to him after he has given consent, he may not buy the expensive ones but the cheaper ones. So, I do not mind this approach of the direct marketers. I only oppose their making use of a verbal approach to lower clients' vigilance and attention in order to obtain consent that is not genuine.

Chairman, I have noticed that Mr WONG Kwok-hing is not present. I really mind that Mr WONG Kwok-hing or Members in the Federation of Trade Unions vote for the Government's amendment. Why? It is because I do not wish to see Mr WONG Kwok-hing making a big fuss over nothing in the end. They seem invincible when they speak but they flinch when they vote. I wish that I have wronged him. I hope that Members in the Federation of Trade Unions (especially Mr WONG Kwok-hing) will vote for my amendments.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Chairman, I thank Members for their speeches.

To regulate the use of personal data for direct marketing purpose is a very important part in the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill). The Bills Committee on Personal Data (Privacy) (Amendment) Bill 2011 (the Bills Committee) has discussed this point in great detail many times and we have proposed amendments to the regulatory requirements having taken account of Members' views. For example, the opt-out mechanism is not adopted and it is alternatively specified that a data user can only use or provide a data subject's personal data to others for use in direct marketing after he has received a reply from the data subject indicating consent or no objection.

I have just heard Mr James TO mention in his last speech Mr WONG Kwok-hing's name. Though Mr WONG Kwok-hing is not in the Chamber right now, I must do him justice. I clearly remember that, at the first few meetings of the Bills Committee, Mr WONG Kwok-hing emphasized that the opt-out mechanism could not be accepted. He said that he would move amendments if the Government did not do so. Besides Mr WONG Kwok-hing, some other Members also strongly resisted the opt-out mechanism. Therefore, the Administration finally accepted Members' views and withdrew the opt-out mechanism. And it has alternatively specified that a data user can only use a data subject's personal data or transfer the data to others for use in direct marketing after he has received a reply from the data subject indicating consent or no objection.

Some other views of members of the Bills Committee have involved the specific operation of direct marketing activities. We believe it is more appropriate for these activities to be covered in the guidance notes to be prepared by the Privacy Commissioner for Personal Data (the Commissioner) in the future. For example, as to whether the audio recording of verbal communication should be stipulated in the Ordinance, we have made reference to the arrangements of the banking and securities industries where the requirement of audio recording is covered in the guidelines or codes issued by the regulators. The Commissioner will issue guidance notes on the new requirements on direct marketing, in which the guidelines for audio recording of oral exchanges will be covered.

Just now, Ms Cyd HO has also suggested that the Commissioner should work out the standard expressions in verbal communication for data users to prevent them from speaking in a tricky manner or misleading data subjects. We have conveyed her suggestion to the Commissioner for consideration when guidance notes and educational materials for the public are prepared in the future.

On Mr James TO's five amendments, Amendments 1 and 2 are about the exemption in respect of direct marketing. The exemption we propose is that if any personal data which has been collected before the commencement of the new requirements on direct marketing complies with the conditions specified before a certain date, the exemption will apply. Mr TO has referred to this date as the "cut-off date" and I will continue to use this term. We propose setting the cut-off date as the commencement date of the new requirements. In other words, if the exemption conditions are met before that date, the new requirements will not apply when a data user continues to use the personal data collected before the commencement date and updated from time to time in direct marketing after the commencement of the new requirements. Mr James TO's Amendments 1 and 2 propose setting the cut-off date at an earlier date, that is, earlier than the commencement date of the new requirements — respectively on 8 July 2011 or the date of Third Reading of the Bill.

We have proposed the exemption to deal with the personal data collected before the commencement of the new requirements on direct marketing. I have explained in detail the reasons for the exemption when I spoke a while ago. If the cut-off date is set at 8 July last year or the date of Third Reading of the Bill, as proposed by Mr James TO, the personal data collected by a data user between that date and the commencement of the new requirements cannot continue to be used in direct marketing after the commencement of the new requirements, even if all the exemption conditions are met, unless he takes steps to comply with the new requirements. For example, informing a data subject about the intended use of his personal data for direct marketing purpose; the kinds of personal data to be used; the classes of marketing subjects the data is to be used. The data user must notify the data subject that he must obtain the data subject's consent before he can use such data, and he must also provide the data subject with a response facility.

This will bring about two consequences. First, a data subject will receive a number of notifications from a data user, and the data subject may have

received the promotional messages on the products or services before but he has not indicated objection, which may cause the data subject much nuisance. Second, before a data user completes the steps I have just mentioned and gets a reply indicating no objection from a data subject, he cannot use the personal data of the data subject in direct marketing. Direct marketing activities will be affected within a certain period of time, which is not necessarily a good thing to the industry and consumers.

Some may suggest that a data user can collect personal data according to the new requirements between the earlier cut-off date proposed by Mr James TO and the commencement of the new requirements, even though the new requirements have yet come into effect. Then, the data user does not need to take steps to comply with the new requirements after they have come into effect. However, I wish to say that, for data users, this is the same as advancing the commencement date of the new requirements. I have said at the resumption of Second Reading debate that before the commencement of the provisions relating to direct marketing, the Commissioner needs to prepare detailed guidance notes, and carry out publicity and educational activities on the new regulatory requirements, including to organize workshops for different industries so as to assist them in complying with the new requirements. Nevertheless, between the earlier cut-off date proposed by Mr James TO and the commencement of the new requirements, the guidance notes to be prepared by the Commissioner are not yet ready and publicity and educational activities are not yet launched or completed. In other words, even a data user has the intention of complying with the new requirements, given the lack of these complementary arrangements, it will be difficult for full compliance.

Mr James TO and some other Members are worried that even if a data user has no intention to use the personal data collected before the cut-off date in direct marketing, a data user will do so in order to be exempted, in a way bypassing the new regulatory requirements. I would like to say that our proposed exemption is not given to the data user simply because he has used the data subject's personal data in direct marketing once or many times before the commencement of the new requirements. To invoke the exemption, the following conditions must be met: first, the data user must clearly inform the data subject before the cut-off date as we proposed; that is, before the commencement date of the new requirements in a manner that is easily understandable, about the intended use of his personal data in direct marketing and the class of marketing subjects such data

to be used. If the information is provided in writing, it must be presented in a manner that is easily readable; second, the data subject has not asked the data user to cease to use his personal data; and third, the data user has not, in relation to the use, contravened any provision of the Personal Data (Privacy) Ordinance (PDPO) in force then.

Mr TO or Mr WONG Yuk-man has just remarked that the data purchased can continue to be used. Ms Cyd HO has also been worried that data users can continue to sell personal data. Actually, the exemption cannot be invoked if the buying or selling of personal data does not comply with the existing legislation.

Mr LEUNG Kwok-hung has just indicated that this means responsibility will not be affixed for a thing of the past. Chairman, I wish to restate that — I have already explained at the resumption of Second Reading debate and when I have just introduced the amendment — I admit that it may not be very appropriate for the English expression "grandfathering arrangement" to be translated into the Chinese expression "不溯既往" in the papers submitted to the Bills Committee back then, which made people misunderstand that responsibility will not be affixed for a non-compliance in the past. I have also remarked at the Second Reading that I hope the Chinese expression "豁免安排" (the exemption) will be used in place of the Chinese expression "不溯既往" (the grandfathering arrangement) in the future, so as to reflect the true meaning of the provision, that is, the past use of data must comply with the PDPO in force then, and there should be no non-compliance before the exemption will be invoked. Despite my repeated explanations, Mr LEUNG Kwok-hung has still interpreted the expression as responsibility will not be affixed for a thing of the past. And he has kept telling his own stories in an opinionated manner, not attempting to understand our amendment. I think it is a great pity that he has continuously made such comments. After the explanation this time around, I hope Members can understand the exemption under the proposed amendment.

I would also like to clarify that the proposed exemption is only confined to be applied to direct marketing of the same class of products or services, and also only applied to direct marketing conducted by data users themselves but not to the provision of personal data to others for use in direct marketing.

Therefore, when Mr LEUNG Kwok-hung said that data users could provide such data to others before the commencement of the new requirements, it

only shows that he practically does not understand the present exemption proposed by the Government. I hope that Members would understand the exemption better after the explanation that I have just given.

Mr WONG Yuk-man has talked about "class" just now. Actually, it is not a new concept. The reference to "class" is present in the provisions of the existing PDPO. The guidelines relating to the direct marketing provisions in the PDPO issued by the Commissioner in October 2010 also contain guidelines on the classes of services and products, so as to assist data users in complying with the requirements of the existing PDPO. In the future, the Commissioner will prepare new guidance notes for the requirements on direct marketing, which will also include guidelines concerning the same class.

Amendment 3 of Mr TO specifies that a data user must receive a written reply from a data subject indicating that he does not object to the use of his personal data in direct marketing before using the data. In other words, an oral reply is unacceptable.

As I have just explained when I moved the amendment, we propose to accept an oral reply by a data subject because we have considered that it is not uncommon for the business sector to collect personal data and conduct transaction over the telephone. In light of the fact that the banking, telecommunications and insurance industries carry out direct marketing and various transactions with clients by telephone on a daily basis, people generally accept this fast, convenient and reliable mode. Thus, we propose to permit this kind of verbal communication.

I have also touched upon the views of the Commissioner when I moved the amendment earlier. We all know that, under the existing legislation, a data subject can request a data user to cease the use of his personal data in direct marketing at any time. It is proposed in the Bill that this request should be made in writing, but, the Commissioner has considered that if notice has to be given in writing, it will not facilitate a data subject to raise objection. The Commissioner has proposed to permit the request to be made orally, and we have accepted his proposal. Having learnt about this proposal, the industry has asked why a data user cannot orally communicate with a data subject if the Commissioner thinks that a data subject can orally request a data user to cease the use of his personal data in direct marketing. For example, why can a data user not orally give some

information and seek the consent of another party for the use of his personal data in direct marketing? I hope Members would consider whether we need to set some uniform standards. Why is it reliable and acceptable for some people to do things verbally while it is not so reliable for some others to do the same?

Mr TO's Amendment 4 specifies that if a data subject's consent is given orally, indicating no objection to the use of his personal data for direct marketing purpose, a data user must, within 14 days after sending a written reply confirming the date and details of the response, not have received any objection from the data subject to the written reply before using the personal data of the data subject in direct marketing.

I wish to restate that oral consent is accepted because this is a practice generally adopted by business and other organizations and the public, and accepted as reliable. Furthermore, there is an additional requirement in our amendment requiring a data user to issue a written confirmation to provide a data subject with an additional safeguard. Even if a data subject has replied to indicate no objection, he can request a data user to cease the use of his personal data in direct marketing at any time in the future. We are of the view that it is unnecessary to require a data user to wait another 14 days after issuing the written confirmation.

Mr TO's Amendment 5 proposes that a data subject may require a direct marketer to provide source of information. We understand that Mr TO is very much concerned about the nuisance caused by direct marketing activities and the public generally consider that direct marketing telephone calls cause greater or the most serious nuisance. Yet, Mr TO's amendment may not be able to combat these annoying direct marketing telephone calls.

According to the two opinion surveys conducted by the Office of the Telecommunications Authority in 2008 and 2009, half of the person-to-person telemarketing calls did not involve the personal data of the receivers. Since personal data was not involved, these telemarketing calls were not within the scope of regulation of the PDPO. In another half of the cases, the two parties mostly had existing customer relationships and the data subjects knew that they had provided their personal data and therefore did not need to be notified by the data users of the source of information. Therefore, Mr TO's proposal may only be able to deal with a small number of cases concerning direct marketing

telephone calls. If it is mandatorily required that a data user must provide a receiver with the source of his personal data when requested by the receiver of a person-to-person telemarketing call, this requirement can actually be bypassed by regarding the telemarketing call as a random telephone call, or by not disclosing any personal data of the receiver. So, it may not be able to effectively deal with the nuisance caused by person-to-person telemarketing calls. On the contrary, some data users who abide by the laws and comply with the regulations, especially small and medium enterprises, have to bear additional costs in complying with the requirement proposed by Mr TO.

Mr TO's amendment also proposes that if a data user cannot provide the information required by a data subject, he must issue within 14 days to the data subject a written declaration containing the specified information; otherwise, he will commit a criminal offence. If the data user conducts direct marketing activities by telephone, he may only have the data subject's name and telephone number. To comply with the requirement of issuing a written declaration as proposed by Mr TO, he must obtain from the data subject his correspondence or email address and so on, so that he may issue a written declaration. This will in a way enable the data user to obtain more personal data from the data subject.

In addition, Mr TO's amendment has not specified that the data subject must provide his correspondence or email address and so on, to enable the data user to issue a written declaration. The amendment has also not specified that the data user does not have the responsibility to issue a written declaration if the data subject refuses to provide the data user with correspondence methods to enable him to issue a written declaration. In other words, if the data subject refuses to provide correspondence methods, the data user will commit a criminal offence for the failure to issue a written declaration. This means that a data subject controls whether or not a data user will commit a criminal offence. May I ask if this is reasonable? Does it comply with the legal principle? It seems that this proposal has not gone through thorough studies.

For the above reasons, we do not accept Mr James TO's amendments. I implore Members to support the Administration's amendment.

I so submit, Chairman.

MR JAMES TO (in Cantonese): Chairman, I would like to briefly refute a few points made by the Under Secretary. The answer to the last point she just made is simple enough. If a data subject has not told a data user the way in which he may send a reply, the offence of course cannot be established. This is indeed very obvious.

Second, according to the Secretary and the Under Secretary, people can easily bypass the disclosure requirement. For example, the Under Secretary has just said that people may pretend that it is a random call, turning telephone recording suddenly to real-time person-to-person dialogues. I can only say that all requirements may be bypassed. We also know that there are ways to bypass the Under Secretary's proposals with which we agree. However, the question is that we must ascertain this right is very important and even though it can just partially solve the problems, it is already a merit.

As to the Under Secretary's question as to what should be done if some people do not abide by the rules, honestly speaking, all the changes proposed by the Under Secretary now can hardly punish those who do not abide by the rules. However, those who abide by the rules will not have additional costs. What are the reasons? I can cite the views of the Direct Selling Association of Hong Kong Limited for I assume that businessmen who are willing to form an association should also be willing to abide by the rules. The Association did not raise opposition at the public hearing on 26 November 2011. Some direct marketers even told us that they would reply to clients' enquiry about the source of information within seven days according to the code of practice. I do not know if they are people who wear suits and ties and pretend to be noble as Mr LEUNG Kwok-hung has just described. But they have at least claimed that they will give a reply within seven days as specified in the code of practice. Why do they not abide by the statutory rules after the rules have been made? That is incredible.

Lastly, Chairman, regarding Amendments 1 and 2 as just mentioned, the Under Secretary has said that if the cut-off date is specified as the date of First Reading in July 2011 or the date of Third Reading, this may cause the suspension of the use of data by some direct marketers for some time, which is the price pay for this requirement. Nonetheless, we will find on the other side of the balance that in the next few months, the whole market and even all Hong Kong people will suddenly receive some direct marketing calls. And there will be a sudden

increase in direct marketing calls using the data for the first time. Why? It is because this can achieve the effect of the grandfathering arrangement. If a person does not want the data to be handled by a new mode of data collection and consent nine months later, he must use the data by a simple mode once. Is that a price? It is similarly a price for nuisance. The Government does not regard the nuisance caused to the public as a price. But it is a price when the direct marketing industry has to suspend the use of the data for some time. It is as simple as that.

CHAIRMAN (in Cantonese): Before I ask the Secretary for Constitutional and Mainland Affairs to move the amendment, I wish to remind Members that if the Secretary's amendment is passed, Mr James TO may not move his five amendments.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for five minutes.

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 CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted for the amendment.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr WONG Yuk-man voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 45 Members present, 28 were in favour of the amendment and 16 against it. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

CLERK (in Cantonese): Clause 21 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Clause 21 as amended stands 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.

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM, Miss Tanya CHAN and Mr WONG Yuk-man voted for the motion.

Mr LEUNG Yiu-chung voted against the motion.

Ms Cyd HO and Mr CHEUNG Kwok-che abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 45 Members present, 41 were in favour of the motion, one against it and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): New clause 23A Section 45 amended (Protection of witnesses, and so on).

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Chairman, I move that new clause 23A as set out in the paper circularized to Members be read the Second time.

As clause 3(3) of the Bill proposes the addition of the definition of "rule of law" to section 2 of the Personal Data (Privacy) Ordinance, and the definition does not include "enactment", we should add new clause 23A to the Bill to add the words "enactment or" before "rule of law" in section 45(1) of the Personal Data (Privacy) Ordinance. This is a technical amendment.

I implore Members to support and pass the new clause. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 23A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

(Mr WONG Yuk-man rose)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, do you have any questions?

MR WONG YUK-MAN (in Cantonese): I claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, I have already announced the voting result.

MR WONG YUK-MAN (in Cantonese): Did you not see that I had risen?

CHAIRMAN (in Cantonese): You only rose after I had announced the voting result.

MR WONG YUK-MAN (in Cantonese): Can we argue over that?

CLERK (in Cantonese): New clause 23A.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Chairman, I move that new clause 23A be added to the Bill.

Proposed addition

New Clause 23A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 23A 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)

Mr LEUNG Kwok-hung rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the motion.

Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 48 Members present, 46 were in favour of the motion and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Annex.

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

MR WONG YUK-MAN (in Cantonese): Concerning the technical issue of changing the term "personal data" from a countable noun to an uncountable noun, I think consistency should be achieved. I notice from this amendment to the Annex that there is a lack of consistency in the laws, Chairman.

For example, there are many provisions in the Chinese version that use the term "該等資料" (those data) where data is considered as a plural noun. Another example is the Communications Authority Ordinance just passed in April this year, which also contain provisions using "如該等資料……" and "該等資料……", and there are many instances of the use of "該等資料" in the Ordinance. The same applies to the Hong Kong Science and Technology Parks Corporation Ordinance, the Chemical Weapons (Convention) Ordinance and the Banking (Capital) Rules.

A problem arises here. There are certainly academic arguments about English grammar, right? Some people have written books to give explanation but the laws are not academic papers. It will be best if the provisions are consistent in terms of grammatical accuracy but that is not the case now. Therefore, we hope the Government would introduce individual bills to standardize the grammar of the legislation so that words with the same meaning will be expressed in the same way. The Annex has been included for no reason. It does not comprise careful analysis. Instead, it has just changed all instances of "those data" to "the data", "該等資料" to "該資料", as well as "某些個人資料" to "個人資料", which has exceeded the proper limits in righting a wrong. It will be most desirable for changes to be made to all the laws but that will be a tremendous task.

Should this issue concerning "uncountable nouns" and "countable nouns" be solved when amending or drafting laws in the future? I particularly wish to remind the Government about this issue when I am speaking on the Annex. Actually, the laws of Hong Kong are not consistent in this respect. If we now make minor amendment to the Chinese words "該等" (those), which is used before a pluvial noun, to change the noun to the singular form, do we need to make corresponding amendments to all the other laws? There are instances of the use of "該等資料", "are" or "data are" in many provisions. Are we going to make changes to all these provisions? I would like to tell the Government in passing that we have found such a problem.

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

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Chairman, on the issue just raised by Mr WONG Yuk-man, as I already gave a detailed explanation when I spoke for the first time at the Committee stage on Monday, I will not repeat the points already made. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the Annex 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)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for five minutes.

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.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr

CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE and Miss Tanya CHAN voted for the motion.

Mr LEUNG Kwok-hung and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 46 Members present, 43 were in favour of the motion and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2011

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

Personal Data (Privacy) (Amendment) Bill 2011

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 Personal Data (Privacy) (Amendment) Bill 2011 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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

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

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick

LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Miss Tanya CHAN and Mr WONG Yuk-man voted for the motion.

Mr LEUNG Kwok-hung abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 47 Members present, 45 were in favour of the motion and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Personal Data (Privacy) (Amendment) Bill 2011.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Residential Properties (First-hand Sales) Bill. Please refer to page 1 of Part IIA of the script.

(Bill scheduled to be dealt with at this Council meeting)

RESIDENTIAL PROPERTIES (FIRST-HAND SALES) BILL

Resumption of debate on Second Reading which was moved on 21 March 2012

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR CHAN KAM-LAM (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Residential Properties (First-hand Sales) Bill (the Bills Committee), I would like to report on the major deliberations of the Bills Committee.

The Residential Properties (First-hand Sales) Bill (the Bill) mainly seeks to provide a legal framework for the regulation of the sale of first-hand residential properties.

The Bill provides that property size and price may only be quoted on the basis of saleable area (SA), which has a commonly-adopted definition, in sales brochures, price lists, and advertisements. The vendor, on the other hand, must make public free of charge the bilingual sales brochures at least seven days before the date of sale, and also make public the price list at least three days before the date of sale. The minimum number of residential properties to be covered in the first and subsequent price lists depends on the size of the development.

The Bills Committee has noted that while many deputations have expressed support for adopting SA as the basis for quoting property size and price, some other deputations have pointed out that gross floor area (GFA) is currently used as the basis for quoting property size and price in the second-hand residential market. It is therefore suggested that both SA and GFA should be used concurrently, thereby facilitating prospective purchasers to make comparison between first-hand and second-hand residential flats. Members have also expressed concern that disallowing GFA-related information may constitute a restriction on the right to freedom of expression guaranteed under the Hong Kong Bill of Rights Ordinance, whereas requiring vendors to publish price list covering a minimum number of residential properties may constitute an unjustifiable restriction on the vendor's right to use or dispose of his property in breach of Articles 6 and 105 of the Basic Law.

The Administration has explained that using SA as the only basis for quoting property size and price of first-hand residential properties is not only because GFA does not have a standardized definition, but also because it is not the most suitable way of showing the public and prospective purchasers the floor area of a residential property. In order to work out a standardized definition of GFA, we need to get all the key stakeholders to agree upon the types of common areas in a residential development which should be counted towards the GFA for

a property, and to reach a consensus on the measurement. It is expected to take a long period of time. The Administration has stressed that it is not proposing to ban the disclosure of information beyond SA. While property size and price will not be allowed to be quoted on the basis of GFA under the Bill, vendors must provide in the sales brochures the area of those features which owners of a residential property will have exclusive use, as well as the types and sizes of all common facilities in the development, so as to enable the prospective purchasers to know clearly what they are buying. Therefore, the Administration does not agree that the proposed measure is inconsistent with the right to freedom of expression under the Hong Kong Bill of Rights Ordinance. Neither does it agree that the requirement that a price list must cover a minimum number of residential properties will be a contravention to the protection of property rights under Articles 6 and 105 of the Basic Law, because the Bill has not required the vendors to sell all the residential properties covered in the price list.

In the light of members' concern about the sales brochures and price lists, the authorities have proposed a number of Committee stage amendments (CSAs), including the sales brochure being made public in relation to a sale has to be the version updated or examined within the past three months. To facilitate the public to know mere clearly as to whether the price of a residential property has been changed, the authorities will introduce CSAs to the effect that if the price of a specified residential property set out in a price list is changed, the vendor must reflect such a change in price by a revision to the price list.

The Bills Committee has also expressed concern that the Bill does not apply to developments constructed by the Hong Kong Housing Authority (HA). The authorities here explained that, technically speaking, certain requirements under the Bills cannot fit squarely into the mode of sale of the HA. Members have pointed out that the authorities should only grant exemption to requirements which do not apply to the HA, instead of granting blanket exemption to all developments constructed by the HA. After considering members' views, the authorities agree to introduce CSAs to the effect that developments constructed by the HA will be exempted from requirements under Part 2 of the Bill (that is, Sales Practices in Relation to Specified Residential Property). Nonetheless, the HA will still be required to comply with other requirements under the Bill. The Secretary for Transport and Housing will undertake at the resumption of Second Reading debate on the Bill that the HA will sell flats units developments with

high transparency in accordance with the principle as reflected in Part 2 of the Bill.

The Bills Committee has also thoroughly discussed other issues, including the definition of vendor, the disclosure of records of transactions, the feasibility of expanding the scope to misrepresentation and dissemination of false or misleading information in relation to the sale of overseas first-hand residential properties conducted in Hong Kong, the provision for the time point for counting the three-year prosecution time limit, the defence provisions and the power of the Authority. In the light of members' concern, the authorities have proposed the relevant CSAs. Therefore, in principle, the Bills Committee supports the CSAs proposed by the Administration.

President, next I will speak on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong to express our views on the Bill.

As the Bill can provide strong protection for prospective home buyers, the Bills Committee has therefore lost no time in scrutinizing the Bill, hoping that it can be passed before the recess of the Legislative Council. We have therefore conducted 20 meetings and received public views within as short as three months.

I think that the Bill has responded to the longstanding aspirations of the general public. Home purchase is the most important investment in a lifetime for an ordinary citizen, who may have to take a decade or two, or an even longer time to repay the mortgage. In view of the rocketing property prices in recent years, people are very eager to buy a suitable and affordable home for themselves.

And yet, no matter how cautious people are, there are still numerous complaints about "inflated areas", and layout and finishes of properties not conforming with the descriptions. In particular, in the sale of first-hand residential properties, buyers have no opportunity to view the actual condition of the properties before signing an agreement. They can only rely on the show flats, sales brochures or advertisements to learn about the condition of their flats.

However, as Members can imagine, developers will certainly build the most attractive show flats by, for example, converting kitchens into open style or using glass partitions, just to steal the eyes of the viewers. As a result, the flats often fall short of the expectation of many buyers when they take possession of

the completed flats. There was a case where a buyer found that the room was not big enough to place his tailor-made bed only when he took possession of the flat.

Among the complaints, most of them are about "properties with inflated areas". The GFA of a property often differs greatly from the SA that can be used by the buyers. If a flat is sold at $7,000 per square foot, as "inflated" area of 50 square feet will cost the buyer $350,000, not to mention that the "inflated" area always exceeds 50 square feet. According to members of the trade, the biggest difference may amount to 20% to 30% of the area.

Although feeling aggrieved, people are aware that residential property developments are more or less the same. Worse still, they can neither afford the time and effort to bring the case to the court, nor forfeit the down payment. Thus, they usually have no choice but to tolerate silently. This has developed into an unhealthy phenomenon in the market. Therefore, it has been the common aspiration of the community all these years to strengthen the regulation of the sale of first-hand residential properties to eradicate the problem of "inflated flats".

The Bill has adopted the recommendations set out in the report of the Steering Committee on Regulation of Sale of First-hand Residential Properties by Legislation and provided a holistic and effective framework to regulate all aspects relating to the sale of first-hand residential properties, including the sales brochures, the advertising and marketing practices, the standard of show flats, the calculation of the area for sale, the disclosure of information before the sale, the minimum number of residential properties to be sold in each batch of sale, the specific sales arrangements and the provision of penalties.

This legislation has, on the whole, enhanced the transparency and fairness of the sales information of first-hand residential properties, thereby safeguarding consumers' right to know. We consider that this Bill is an important step forward with regard to the regulation of the sales of properties and the protection of the rights of property buyers. President, although the Bill is yet to be passed, the Government and the real estate sector has already agreed on a Consent Scheme in recent years, under which the vendor must provide information of property developments as required when they are put up for sale.

During the deliberation of the Bill, we have recently visited a number of points of sale for first-hand properties to gain a better understanding of the situation. I am pleased to see that the information and sales brochures available at the points of sale are getting closer to satisfy the requirements under our scrutiny. Some people are worried that developers may have difficulty in complying with the new legislation, or that additional costs will be incurred. We consider such worries unnecessary.

In fact, the successful introduction of the Bill does owe much to the support of developers. At present, there are only 10-odd or at most 20-odd developments that are newly constructed or approved for pre-sale every year. The sale of flats is therefore carefully planned and the publication of attractive sales brochures for the reference of prospective buyers is no difficult task. Thus, after the passage of the Bill, there will be statutory rules and regulations to abide by.

However, we must also point out that there is often a kind of herd mentality among home buyers. Even if the prospective buyers have ample information about the properties for sale, they may not study it carefully. As a result, they will only find this and that problem after buying the property. I am afraid that this is the general culture of home purchase among Hong Kong people. We call on home buyers to gain a good understanding of the property development before making up their minds, and be smart home buyers.

President, we hope that once the Bill is passed, all the bad practices of the property market will be eradicated and the home-buying attitude of people will be improved, thereby enabling the property market of Hong Kong to develop in a more fair, transparent and healthy manner. President, due to time constraints, I do not wish to say too much. I will add more points when the CSAs are discussed.

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

MS AUDREY EU (in Cantonese): President, it is now 11.15 pm on 27 June 2012. I must say that this is the long-awaited moment and it finally comes. We can now resume the Second Reading debate on the Bill on first-hand residential properties.

When I studied law in the 1970s, I always had one question in mind. While there was statutory control over the sale of any goods, be it an orange or an apple, there was none for the purchase of properties though it is a major decision in one's life. When I became a member of the Consumer Council in the 1980s, I came across many cases relating to the buying and selling of properties and learnt, in particular, how unfair the consumers were treated. Despite that the Consumer Council often voiced out on the problems relating to the buying and selling of properties, the Government had all along refused to legislate. Then, in the 1990s, I participated in several studies of the Law Reform Commission (LRC) relating to the regulation to be imposed on the buying and selling of properties. We published many reports, one after the other, on overseas sales of properties, local uncompleted developments and transactions of local flats for resale after conversion. However, all these published reports were shelved by the Government.

In 2000, the Government issued a white bill for public consultation and it seemed that it was going to legislate on the buying and selling of properties. I was just elected a Legislative Council Member back then, and guess what happened afterwards? The Government withdrew the white bill. I asked the government official concerned why the Government had to withdraw the white bill all of a sudden when the issue had been discussed for so long and the LRC had also published so many reports. The official replied that the white bill had met with opposition from the developers and this was the only reason. He said that certain provisions of the legislation concerned might involve criminal liability. And, as commercial developers were often companies, which naturally had directors, those provisions might hold the directors criminally liable in some cases. Therefore, the developers opposed and the Government had to withdraw the white bill.

I have been following up on the matter for many years but to no avail. I remember that when I had a debate with the Chief Executive in 2010, I asked why vendors selling vegetables in the market were criminally liable for "cheating at weights", but property developers "cheating at floor area" were not bound by the law even though buying a property was a major event in life. At that time (in 2010), there were many cases of consumers being cheated in property transactions, which had aroused serious public concern. Among these were cases in which properties were sold at sky-high prices, only subsequently proved to be fabricated and the relevant transactions were even cancelled in the

aftermath. There were also cases of developers skipping the floor numbers, such that a building of only 30 to 40 storeys high turned out to have some 60 storeys. Apart from cases of skipping the floor numbers, there were cases of diminishing storeys. A buyer thought that the flat he bought was on the fifth floor, but it turned out that it was actually at the ground level. These cases have spurred even greater public outcry for legislation to regulate the transaction of first-hand residential properties.

Therefore, President, we have really waited too long for the introduction of the relevant blue bill. However, I am deeply dismayed — it is the usual practice of the Government to table a bill at the Legislative Council when it is approaching recess — noting that the last day of meeting of the Legislative Council this year is 17 July, the Government still tabled this voluminous blue bill of more than 400 pages at this Council only a few months ago. Just as Mr CHAN Kam-lam, Chairman of the Bills Committee, has mentioned earlier, we have held 20 meetings in three months and very often, only Mr CHAN Kam-lam and I attended the meeting. I do not mean to accuse other Members of being lazy, but merely want to illustrate that many Legislative Council committees have to rush through their deliberation. After moving into this new Legislative Council Complex, we have more conference rooms and hence several meetings can be held at the same time. And yet, no Member can attend two meetings at the same time and sometimes even a division of work cannot be achieved. Despite that the clause-by-clause examination of bills requires a quorum, but a quorum was not present for most of our meetings.

Mr CHAN Kam-lam, Chairman of the Bills Committee, has said just now that public hearings have been conducted and many members of the public have been invited to express views. It is true that many members of the public have been here to express views, which include The Law Society of Hong Kong (Law Society). Law Society provided a submission of 20-odd pages in April, but like any others, its speaking time was only three minutes. After submitting the views to the Government, it did not respond to the views of the attendants of the hearings until it was urged time and again. We had been waiting for so long but the Government only responded after the clause-by-clause examination of the Bill started for some time. Of course, the responses made by the Government were also made available to organizations which had attended the hearings, including Law Society. After reading the Government's response, Law Society noted that some of their views were adopted but a lot were not. It therefore conscientiously submitted another submission to the Bills Committee in June,

stating that the Bill still had many other problems despite that some of its views were adopted.

President, why did I mention Law Society in particular? Because the Bill does involve many legal provisions on property transaction, for example, which provisions should or should not be included in the Agreement for Sale and Purchase, and which provisions should or should not be included in the sales brochures. Given that many of these provisions are subject to hard and fast rules, any slight mistake or error in drafting may affect the transaction or even the title of properties. Therefore, Law Society — especially experts who are concerned with property transactions — has many views and worries that the hasty passage of the blue bill without providing Law Society with sufficient time to examine the Bill and express its views would give rise to problems. Therefore, after studying the amendments provided by the Government, The Law Society finds that there are still problems.

Today, I still received views from Law Society, asking Legislative Council Members from the Civic Party to pay attention to certain issues. I nonetheless replied its representative that it was too late and no more amendments could be proposed as the process was completed. Law Society had no choice but to give the letter to the Legislative Council Secretariat today and requested it to pass the letter to all members of the Bills Committee. It is impossible for me to highlight all the viewpoints of Law Society during this 15-minute speaking time. Even if I attempt to do so when the amendments are discussed, I think it would be quite difficult as some are pretty technical.

Furthermore, the Legislative Council is having a log-jam of bills. If we explain each and every amendment in great detail and put on record all the problems involved, it would not be impossible for us to deal with the remaining bills waiting for deliberation. Therefore, I can only undertake to Law Society that those more important issues will be highlighted during the Committee stage by all means. Yet, issues which will not be brought up do not mean that they are not important. I wish to put on record that The Law Society has clearly indicated its support for the Bill, but still held that it has many problems. However, Law Society is aware that even if the Bill is passed, it will not come into operation at once. There may be another year because the Government needs to appoint the Authority, who must be assisted by public officers.

According to Mr PESCOD, this might take some time because the Government must first examine the amount of resources required, and then apply to the Legislative Council for funds and possibly additional manpower. Therefore, the legislation can only come into force after some time. Law Society requests that the Government should consider its views which are not only concerned with the right of consumers, but also the issue of titles. Law Society therefore wishes to continue its discussion with the Government so as to bring out all the problems before the legislation actually comes into force.

President, I wish to point out in particular that I have been overshadowed by something during the deliberation of the Residential Properties (First-hand Sales) Bill. What is it? Towards the end of the previous term or the term before last, we were also required to rush through certain bills. It was 2004, the term before last, when the Bills Committee on Land Titles Bill, under the chairmanship of Dr Margaret NG, examined the Land Titles Bill. At that time, the Government hoped that, after the passage of the Bill, solicitors would no longer be required to tediously trace the relevant documents, challenge incomplete titles and examine the land title. Rather, a simple certificate could provide the necessary guarantee, thereby rendering the entire transaction process simpler and more economical. This is certainly a good intention and objective. And yet, though the Land Titles Bill was indeed passed in 2004, it has yet come into effect to date in 2012 due to numerous problems.

Whenever I look at the Residential Properties (First-hand sales) Bill, I hope that its deliberation process would not resemble that of the Land Titles Bill, when we were required to ply between different conference rooms to attend various meetings. I plied because I had to run quickly from one room to another. Should I move too slowly, Mr CHAN Kam-lam, Chairman of the Bills Committee, would have proceeded to the next clause and there was no way I could ask him to go back to the previous clause. Therefore, I had to ply between the various conference rooms to examine and consider the relevant provisions clause by clause.

I trust that the Bill does have deficiencies or omissions. This makes me worry that even if it is passed, it may take some time for the deficiencies or omissions to be rectified. Secretary Eva CHENG said that it was her wish to see this Bill passed before she left office. I can nonetheless tell her that this is just the beginning. Whoever takes up her post must start dealing with the relevant

issues of the Bill at once. In fact, the general public has pretty high expectations, especially because just as we have said, the passage and implementation of this legislation have a long history. If we do not rectify the deficiencies or omissions in the first place but continue to discuss the problems involved at a slow pace after the legislation is passed, I believe members of the public will feel disappointed.

President, I will speak again on the various amendments. While I am glad that the Bill finally resumes Second reading, I wish to highlight that this is only the first step. It is hoped that the next Secretary will expeditiously proceed with the relevant work and continue to deal with the legislative matters in this regard. Thank you, President.

MR LEE WING-TAT (in Cantonese): President, the purchase of first-hand residential properties by Hong Kong people has often been criticized in Hong Kong. Just as some colleagues have said, if a trader selling roast pork or vegetables "cheats at weights", he may be prosecuted under the Customs and Excise Service Ordinance or the Weights and Measures Ordinance on repeated offences. And yet, even though the purchase of properties in Hong Kong involves millions of dollars, those "cheating at floor area" are not criminally liable.

I remember that in 2000 when Mr Dominic WONG was still the Secretary ― Mr Dominic WONG passed away more than one month ago ― he introduced a white bill. Twelve years ago, I thought that this white bill might be enacted, but unfortunately the then Secretary Dominic WONG failed to accomplish the mission. In Hong Kong, there are many problems relating to the buying of properties and the most obvious is "inflated flats". I recall that when I was a Member of the Legislative Council in the 1980s and 1990s, the gross floor area (GFA) of a flat which was claimed by the developer to be 1 000 square feet usually had a saleable area (SA) of at least 850 square feet, meaning that the SA is 85% of the GFA. To date, the latest findings, however, have showed that the SA of a flat of newly-constructed buildings with a GFA of 1 000 square feet is only 700 square feet. This is nonetheless not bad as it is not surprising to find similar flats having a SA of just 600-odd square feet. The problem of "inflated flats" has deteriorated as a result of the great discrepancies between the GFA and SA of properties.

As we all know, the Hong Kong Institute of Surveyors has a standardized yardstick to measure the SA, and this is known to the developers, the Government and members of the public. And yet, the GFA may vary greatly. On top of the SA, developers A to Z may add as many different items (from one to 100) to the GFA as possible. There is, President, currently no standardized yardstick to measure the GFA. The problem of "inflated flats" has aroused serious dissatisfaction. Although Hong Kong people have adapted to sky-high property prices, they would be extra mad if the properties they have bought are "inflated flats".

President, these misleading practices do not confine to "inflated" GFA. Other examples are the skipping of floor numbers at 39 Conduit Road and the recent Oceanaire Garden Residence incident where the fifth floor is actually situated at the podium floor whereas the podium floor is at the basement. President, these cases in Hong Kong can actually be featured in some 100 movies. In the past, we used to dream to buy flats surrounded by the sea, but nowadays only the corner window in a toilet can offer a brief sea view, which can hardly be seen. Just as developer Mr LI Ka-shing has said, it is both relaxing and refreshing to live by the landfill. All these descriptions are recorded in our history, I guess no one will forget them.

President, under these circumstances, our Government in the past used to have faith in the developers, as well as The Real Estate Developers Association of Hong Kong (REDA). REDA suggested a decade or two ago to let the industry resolve the problems by self-discipline. However, President, it is mostly fruitless to request Hong Kong businessmen to be self-disciplined. Be it the voluntary minimum wage movement or the regulation of the quality of uncompleted developments by self-discipline of the developers, President, I am sorry to say that they all ended in a failure. Therefore, in the case of Hong Kong, all attempts to regulate the behaviour of businessmen by relying on their self-discipline rather than introducing legislation have failed according to my experience. The outcome of self-discipline is that often after receiving complaints, they will accept others views, but it will happen all over again next time. Although the relevant committee of REDA has conducted meetings, no developer has ever been punished or even warned. I really find it ridiculous if the Government still considers self-discipline a success after these incidents. Thanks to people's continuous disclosure of the developers' intolerable practices to the media and the dozens of special meetings conducted by the Legislative

Council Panel on Housing, under my chairmanship, to condemn the Government for giving a free rein to the developers, the pressure of public opinion has gradually been built. In fact, this is the result of the joint efforts of members of the public, the Consumer Council and the Legislative Council.

President, I wonder why the Government finally changed its stance. Perhaps it was under immense pressure and could no longer argue or deny this was not collusion between business and the Government had it not resolve the problem. I think that this is not only the best evidence of people's dissatisfaction against high property prices, but also their accusation of collusion between business and the Government.

President, about three years ago, the Government began to change its stance and established a steering committee to draft the Bill and consult the public. I was lucky to be appointed as a member of the steering committee and started to work with government officials and other committee members to collect public views for drafting of the Bill. Basically, I am satisfied with the work of the steering committee. As I rarely see relatively open-minded government officials, thus I would like to sing praises of Mr PESCOD and the Secretary. They were willing to listen to my arguments or requests, which they might nonetheless consider irrational. They considered using the Trade Descriptions Ordinance as the framework in the first place. In fact, this Ordinance is relatively mild. I approached some professionals and they also agreed that this Ordinance was not severe enough. Rather, the more severe Securities and Futures Ordinance should be used as reference as its offence carried a maximum penalty of seven years' imprisonment. I therefore subsequently submitted a paper to the chairman of the steering committee Mr PESCOD. To my surprise, one month later, he really accepted my advice. The Bill has made reference to the part of the Securities and Futures Ordinance concerning misrepresentation, meaning that misrepresentation is a criminal offence and is liable to seven years' imprisonment. This is one of the severe punishments provided in the Securities and Futures Ordinance.

Therefore, I must publicly commend the Secretary and Mr PESCOD for accepting this advice. I believe this is the last thing that the developers or the senior level of real estate companies would wish to see. Firstly, it is a criminal offence. Secondly, the maximum penalty for serious misrepresentation is imprisonment of seven years. This is the first time in the history of Hong Kong

that a developer may be imprisoned for the selling of properties. The term of imprisonment is not just one month, but seven years, which is pretty scaring. Of course, President, the penalty may not necessarily be imprisonment of seven years. Honestly speaking, Mr Abraham SHEK can tell other bosses that they may not necessarily be imprisoned so long as they do not breach the law.

While the Securities and Futures Ordinance has an extensive coverage, the most important point is that it is a serious offence for a person who releases information to intentionally make misrepresentation which causes a buyer to buy a property.

Furthermore, I am glad to inform Members that the offence does not simply pinpoint at front-line staff (including sales managers or real estate agents who accompany clients to visit the sites or vie for business). Directors and even developers are also liable to criminal prosecution if they participate in misrepresentation or dissemination of misleading information. I totally agree with this approach.

President, regarding this Bill, one thing I have pursued but to no avail is the provision of a longer cooling period and a more relaxed forfeiture policy. President, why do people always criticize the presence of collusion between business and the Government in Hong Kong's property market and the buying of properties? The study conducted by the consultant commissioned by the steering committee has showed that the buying of properties is something very easy in most countries or regions. What will happen if a person decides not to proceed with the transaction of the property which he has bought a couple of weeks ago? President, sorry, nothing will happen in most cases overseas. The buyer is neither required to forfeit his deposit nor bear any responsibility. Many overseas examples have showed that the buying of properties is a relaxing and pleasant process during which the buyer can choose to buy or not to buy within two to three weeks. How about in Hong Kong? The decision to buy or to sell has to be made on the same day. And, if the buyer subsequently decides not to buy, 5% of the deposit will be forfeited. Is this fair? President, this is not fair indeed.

I am certainly aware of the situation in Hong Kong and have no intention of encouraging people to go to the sales office to casually buy a flat but revert on his decision on the following day. This is why I have proposed to extend the

cooling period and lower the ratio of the forfeiture amount. President, 3% is already a pretty severe penalty. Nowadays, a new flat may often cost about $4 million to $5 million, and 3% equals to $150,000. For flats worth of more than $10 million, 3% equals to $300,000. I cannot see why the amount of $150,000 or $300,000 fails to serve any deterrent effect. After all, President, they are large sums of money.

Another aspect of the Bill which pleases me is the provision of a chance to access to information, and the gradual centralization of information for dissemination by the Government, which ensures that buyers are well-informed.

President, lastly, I wish to talk about the enforcement bodies. President, as I am running out of time, I cannot read out the entire paper. If I am allowed to do so, I do not need to bother about finding subjects to filibuster as this may take at least four days. While there are many different enforcement bodies, I am particularly dissatisfied with the Lands Department and the Buildings Department for their supervision of uncompleted developments in respect of the implementation of the Consent Scheme. On the Oceanaire Garden Residence and 39 Conduit Road incidents, there was buck-passing between these two departments. One of the Departments is supervised by Secretary Eva CHENG and another by Secretary Carrie LAM. I have no idea why things under the supervision of these two Secretaries are always not properly done. Given that they are working in the same cabinet, are they not prepared to communicate with each other? Can they ask their staff to make greater efforts? President, I hope that the relevant enforcement body will be expeditiously established once the Bill is passed.

I will make use of the remaining few minutes to express my personal feelings. I am pleasantly surprised to see the Bill resume Second Reading. Why? When I was a member of the steering committee, Secretary Eva CHENG told me that according to her prediction, the drafting of the Bill would not be completed before mid- or late 2012. I did not quite believe her. I had all along urged the Government at the Legislative Council Panel on Housing to speed up its work and proceed in a balanced manner, meaning working on part A as well as parts B and C at the same time. So long as we proceeded in a balanced manner, the work could be expedited. Initially, I did not think that the Government could really do so, but President, it made it in the end. I originally reckoned that the Bill could not be tabled at this Council for First and Second Readings within this

term, but now it was done. Therefore, despite that the Secretary and I have divergent views on various issues of this Bill, I must commend her as she has tried her very best.

Furthermore, I notice that civil servants can actually work faster when they are urged on. Despite that the drafting of the Bill is expected to be completed between 2013 and 2014, it has been completed in 2012. What is the advantage? We need not examine the Bill again in the coming Legislative Session. We only need to wait for at most another year for the establishment of the enforcement body and the formulation of provisions and details of implementation, which will hopefully be completed by late 2013 or even earlier in early 2013 with continued urging on by colleagues of the next-term Legislative Council. Upon the enactment of the legislation, together with the establishment of the enforcement body and the formulation of other details, I believe members of the public will then enjoy greater protection.

President, finally, I wish to ask: Why are Hong Kong people so miserable? Actually, it is not just about this Bill. Rather, it is the insufficient land supply and building construction. Noting that the market is always in an unbalanced state, consumers are always on the lighter side whereas developers, like Mr Abraham SHEK who is as heavy as 300-odd pounds, are on the other side. Since I weigh only 135 pounds, I cannot outweigh them no matter which side of the balance or seesaw I place myself. This is because on the opposite side is not only Mr Abraham SHEK, who weighs some 200 to 300 pounds, but also some heavyweight developers. So long as the supply of buildings remains inadequate, consumers will always suffer. Therefore, President, all in all, consumers and home-buyers will be sufficiently protected only if there is a balanced market. Thank you, President.

DR MARGARET NG (in Cantonese): President, regarding the Residential Properties (First-hand Sales) Bill (the Bill), I am not well-versed in either residential properties or the protection of consumers' interest in relation to the buying and selling of properties. Then, why am I so eager so speak on the Bill? This is because the transaction of properties involves some very specialized legal services. And yet, I am afraid an increasingly prominent phenomenon observed in recent years is that the Government does not have a good understanding of the matters, nor adequate communication and co-operation with the conveyancing

personnel of The Law Society of Hong Kong (Law Society). This is evident in its handling of different legislation. The reason is probably because the Government has focused merely on the protection of consumers' rights, fraud prevention and penalties, but neglected that the inclusion of the relevant provisions into the legislation without adequate conveyancing expertise may give rise to many problems. As a result of the limited time available to consult Law Society, the Government has failed to take prompt corresponding action after The Law Society submitted its various views.

Since property transaction involves different laws and law is something very sophisticated, therefore anything wrong with the law may lead to litigation. While barristers stress very much on the legal principles, conveyancing is mainly concerned with the provisions of a document and any mistake will lead to litigation, which will inevitably throw the buyers, vendors or their solicitors into great trouble. Therefore, legislation relating to the buying and selling of properties must be very comprehensive and detailed.

This is why The Law Society and the Hong Kong Conveyancing and Property Law Association Limited (the Association) are so concerned whenever we come to conveyancing. Members of the above professional bodies have all engaged in conveyancing for decades and can be said to be the senior workers of the field. As they often purchase one or two properties on behalf of members of the public, they are therefore very concerned about the protection of people's rights in the course of property transaction. In case there is uncertainty in the relevant law, members of the public will certainly suffer most.

For this reason, the abovementioned bodies have submitted two separate detailed proposals. While Law Society has shed particular light on the legal perspective, the Association mainly focused on the issues which consumers must pay special attention to in property transaction. Many of their suggestions are very good. Earlier, Ms Audrey EU has mentioned Law Society's views and there is one very important point. It considers that the Bill has many hard and fast rules, and though this is well-intentioned, it may nonetheless give rise to problems. For example, some provisions are intended to bring benefits to the buyers, but the rigid drafting of the Bill has given rise to certain problems.

President, after burning the midnight oil to carefully study the latest marked-up version of the proposed amendments, I have identified one such

example. Since the amendments are voluminous and were made at different times, I have to read the various amendments, which are indicated in red, blue and yellow, in parallel. The example is clause 31, which is concerned with how property prices can be revised after they are fixed. For example, if property prices drop and the agreed price in the preliminary agreement for sale and purchase is prone to adjust downwards, what should be done? According to the Bill, the original agreement has to be completely revoked and a new agreement must be re-entered. Some people have criticized that this approach under-utilizes the resources and is unfavourable to the buyers.

Yet, today, there is neither means nor time for us to add any relevant provisions to the Bill. Another issue is concerned with the cooling period which we have been discussing all along. A person, for example, may get so excited after viewing a residential flat and immediately buy a flat by signing a preliminary agreement for sale and purchase. Nonetheless, he later finds that the flat is not worth the price. What can he do then? The Bill has set out what should be done if the buyer decides not to sign the formal agreement for sale and purchase. According to the original provision, if the buyer decides not to sign the formal agreement within three days, he will not be responsible for other obligations once the vendor gets the 5% deposit. This provision has actually steered the middle course as the 5% deposit is not a small sum of money, meaning hundreds of thousands of dollars even for an ordinary flat nowadays.

Therefore, the Association highlighted that the sum of money involved was too large whereas the three-day time-limit was too short. The Government subsequently accepted its proposal and revised the relevant time-limit to five days. The Association then went further to say that this five-day limit should not be any hard and fast rules. What should the buyer do if he fails to revoke the preliminary agreement within five days due to the hoisting of No. 10 typhoon signal or the black rainstorm signal? Will he suffer heavy losses as a result? Should the authorities provide for an extension of the relevant time-limit under exceptional circumstances? In the abovementioned case when No. 10 typhoon signal is hoisted, it is impossible for the buyer to revoke the agreement promptly.

On the other hand, should the vendor be required to provide a written notice before forfeiting the 5% deposit so as to enable the buyer to bring the case to the court in case there is a problem? These are very good suggestions not made to protect major property developers but the general public. And yet, there is no more time for further discussion now. Furthermore, section 11, for

example, states that if the transaction involves any family member, say a property is sold to a family member, no restriction should be imposed. This is the revised approach. However, both bodies indicated that the protection should not only confine to family members, but should also cover the so-called family trust in some cases. The Bill is nonetheless silent on this.

Also, there are numerous problems relating to the arbitrary proper nouns and the imbalance of power between the vendors and buyers. This will have serious implication on the solicitors' work, President, which is really meticulous. Solicitors usually work with great attention to detail, and this is in great contrast to people who are even unaware of the existence of unauthorized structures in their house. It is precisely because they are so meticulous in their work that they are worried any mistakes in the provisions will lead to litigation. This explains why Law Society has written more than 100 paragraphs to set out all the deficiencies, and why Ms Audrey EU has said she is unable to elaborate all the deficiencies as the submission is really very comprehensive and detailed. I guess Members of this Council may not fully understand it as it requires a good understanding of the background and good professional knowledge. In fact, raising these points at the Committee stage can only achieve very limited effect.

President, these two bodies have met with the authorities for a number of times. They certainly hope that communication between both parties can be maintained after the passage of the Bill, so as to ensure that their efforts will not be wasted as the recommendations made are all favourable to the consumers. And yet, the Government has always forgotten about this and merely focused on how to criminalize various irregularities or enact a new ordinance. It has forgotten that the issues in question are what many solicitors' firms are doing every day. The Residential Properties (First-hand Sales) Bill is not the first to show this.

Members may recall that another example is the law on special stamp duty. In order to combat property speculation, the Government introduced a bill with retrospective effect within a short period of time back then. Law Society then became very agitated as it did not have enough time to inform the parties concerned their obligations and when the law applied or did not apply to them amid the Government's hasty enactment of the law. President, this can be said to be another example showing that either the Government is not familiar with the implementation of the conveyancing law, or it is too forgetful about these issues.

I can cite another much earlier example. When the Government abolished estate duty back then, the same approach was adopted. At that time, the Financial Secretary attached great importance to Hong Kong's competitive power in the world and was very eager to abolish estate duty within a few months. He thought that everything would be fine once he signed to approve the abolition of estate duty. He did not have the slightest idea that many people's properties were protected under the existing system of estate duty, and the abolition of estate duty would deprive these people of their original protection. What should be done then? In view of this, new provisions would have to be added. While we were examining the bill, we sought the help of Law Society, with a view to making remedies to certain provisions.

The case of the Land Titles Ordinance mentioned just now by Ms Audrey EU is similar. In the course of legislating, it turned out that the then Secretary for Justice did not have any practical experience in conveyancing at all. Fortunately, the then Land Registrar noticed that things were not going well. So, he immediately invited some experts to his office to brief them on the relevant details, thus bringing the legislative process of the bill back on track.

Therefore, apart from stating that the two professional bodies engaging in conveyancing have provided concrete and substantial views on the Bill, I also wish to remind the Government that it is seriously lacking in professional knowledge in this respect and should therefore remain cautious at all time. What is more, special attention should also be paid to many matters concerning land and land grants, which also involve the similar problem.

President, another concern raised by the two professional bodies is about clause 66 of the Bill on the criminal offence in respect of the "dissemination of false or misleading information". If a person disseminates, or authorizes or is concerned with the dissemination of any information, then …… Sorry, it seems that I have made a mistake. It should be clause 67 …… No, it is clause 66(1). It provides that a person commits a criminal offence if the information is false or misleading as to a material fact, and the person knows that, or is reckless as to whether, the information is false or misleading as to the material fact. They are very worried that any mistake in the judgment or omission on the part of the solicitors, though not regarded as serious negligence, will immediately hold them criminally liable.

Certainly, if we look at the relevant provision carefully, we may notice that the legal definitions of "knowing" and "reckless" should not cover inadvertent mistakes or even serious negligence or professional misjudgment. Neither would the person concerned be held criminally liable. Although solicitors are fully aware of their differences, in actual operation, there were nonetheless shocking cases in the past few years, in which the Government arrested the people who cheated but was unable to convict them. Instead, their solicitors were convicted and found guilty, and were only acquitted after they appealed to the Court of Final Appeal. Therefore, people in the legal sector are now frightened out of their wits. This is not because they do not understand the meaning of "knowingly", "knows" or "reckless" in legal provisions, but the fact that solicitors will often fall victim in actual enforcement.

Therefore, they are very concerned about this and hope that I can clearly relay the issue to the authorities. I hope that the authorities can open their ears to these views and avoid turning people who originally intend to help the public into victims. Thank you, President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 2.30 pm tomorrow.

Suspended accordingly at one minute to Twelve o'clock at midnight.

Annex I

Personal Data (Privacy) (Amendment) Bill 2011

Committee Stage

Amendments moved by the Secretary for Constitutional and Mainland Affairs

Clause	Amendment Proposed
1	By deleting subclause (2) and substituting— "(2) Subject to subsection (3), this Ordinance comes into operation on 1 October 2012. (3) Sections 20, 21, 37(2), 38 and 42 come into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.".
3	By adding before subclause (1)— "(1A) Section 2(1)— **Repeal the definition of *data user return*** **Substitute** "***data user return*** (資料使用者申報表) means a return submitted to the Commissioner under section 14(4) and, if applicable, corrected under section 14A(5);".".
3	By adding— "(2A) Section 2(1), Chinese text, definition of ***諮詢委員會***— **Repeal** "會。" **Substitute** "會；"。".
3(3)	By adding— "***change notice*** (變更通知) means a notice served on the Commissioner under section 14(8) and, if applicable, corrected under section 14A(5);".
4	By deleting subclause (2).

7 By deleting subclause (1) and substituting—

"(1) Section 14(4)—

Repeal

"data user return"

Substitute

"return".

(1A) Section 14(5)(b), English text—

Repeal

"be obtained by".

(1B) Section 14(7), English text—

Repeal

"be obtained by".

(1C) Section 14(9)(a), after the semicolon—

Add

"and".

(1D) Section 14(9)(b)—

Repeal

"; and"

Substitute a full stop.

(1E) Section 14(9)—

Repeal paragraph (c).".

7(3) In the proposed section 14(11), by deleting "submitted to, or notice served on, the Commissioner" and substituting "or change notice".

8 In the proposed section 14A(1), by deleting everything after "data user return" and substituting—

"or change notice, the Commissioner may, by written notice served on any of the persons specified in subsection (2), reasonably require the person—

(a) to provide any document, record, information or thing specified in the written notice; and

(b) to respond in writing to any question specified in the written notice.".

8 In the proposed section 14A(2)(b), by adding "or change notice" after "data user return".

8 In the proposed section 14A(3), by deleting "this or".

8 In the proposed section 14A(4), by deleting everything after "subsection (1), the Commissioner" and substituting "has reasonable grounds to believe that any information in a data user return or change notice is inaccurate, the Commissioner may, by written notice, require the data user to correct the information in the data user return or change notice.".

8 In the proposed section 14A(5), by deleting "the period" and substituting "such reasonable period as is".

8 In the proposed section 14A, by adding—

"(5A) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3.".

8 In the proposed section 14A, by adding—

"(7) A data user who, in purported compliance with a notice under subsection (4), knowingly or recklessly in a data user return or change notice supplies any information which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.".

9 By adding before subclause (1)—

"(1A) Section 15—

Repeal subsection (1)

Substitute

"(1) The Commissioner must keep and maintain a register of data users who have submitted data user returns, using information in those returns and in any change notices.".

(1B) Section 15(2)(b)—

Repeal

"under section 14(4), such particulars of the information supplied in that return"

Substitute

", such particulars of the information supplied in that return

and any change notice".

(1C) Section 15(3)—

Repeal

"prescribed form"

Substitute

"specified form".".

11(2) In the proposed section 18(5)(a), in the English text, by deleting "informing" and substituting "inform".

11(2) In the proposed section 18(5)(b), in the English text, by deleting "supplying" and substituting "supply".

13(3) In the proposed section 20(3)(ea), by deleting "disclose the personal data which is the subject of" and substituting "comply with".

21 By deleting the proposed Part VIA and substituting—

"**Part VIA**

Use of Personal Data in Direct Marketing and Provision of Personal Data for Use in Direct Marketing

Division 1

Interpretation

35A. Interpretation of Part VIA

(1) In this Part—

consent (同意), in relation to a use of personal data in direct marketing or a provision of personal data for use in direct marketing, includes an indication of no objection to the use or provision;

direct marketing (直接促銷) means—

(a) the offering, or advertising of the availability, of goods, facilities or services; or

(b) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes,

through direct marketing means;

direct marketing means (直接促銷方法) means—

(a) sending information or goods, addressed to specific persons by name, by mail, fax,

electronic mail or other means of communication; or

(b) making telephone calls to specific persons;

marketing subject (促銷標的), in relation to direct marketing, means—

(a) any goods, facility or service offered, or the availability of which is advertised; or

(b) any purpose for which donations or contributions are solicited;

permitted class of marketing subjects (許可類別促銷標的), in relation to a consent by a data subject to an intended use or provision of personal data, means a class of marketing subjects—

(a) that is specified in the information provided to the data subject under section 35C(2)(b)(ii) or 35J(2)(b)(iv); and

(b) in relation to which the consent is given;

permitted class of persons (許可類別人士), in relation to a consent by a data subject to an intended provision of personal data, means a class of persons—

(a) that is specified in the information provided to the data subject under section 35J(2)(b)(iii); and

(b) in relation to which the consent is given;

permitted kind of personal data (許可種類個人資料), in relation to a consent by a data subject to an intended use or provision of personal data, means a kind of personal data—

(a) that is specified in the information provided to the data subject under section 35C(2)(b)(i) or 35J(2)(b)(ii); and

(b) in relation to which the consent is given;

response channel (回應途徑) means a channel provided by a data user to a data subject under section 35C(2)(c) or 35J(2)(c).

(2) For the purposes of this Part, a person provides personal data for gain if the person provides personal data in return for money or other property, irrespective of whether—

(a) the return is contingent on any condition; or

(b) the person retains any control over the use of the data.

Division 2

Use of Personal Data in Direct Marketing

35B. Application

This Division does not apply in relation to the offering, or advertising of the availability, of—

(a) social services run, subvented or subsidized by the Social Welfare Department;

(b) health care services provided by the Hospital Authority or Department of Health; or

(c) any other social or health care services which, if not provided, would be likely to cause serious harm to the physical or mental health of—

(i) the individual to whom the services are intended to be provided; or

(ii) any other individual.

35C. Data user to take specified action before using personal data in direct marketing

(1) Subject to section 35D, a data user who intends to use a data subject's personal data in direct marketing must take each of the actions specified in subsection (2).

(2) The data user must—

(a) inform the data subject—

(i) that the data user intends to so use the personal data; and

(ii) that the data user may not so use the data unless the data user has received the data subject's consent to the intended use;

(b) provide the data subject with the following information in relation to the intended use—

(i) the kinds of personal data to be used; and

(ii) the classes of marketing subjects in relation to which the data is to be used; and

(c) provide the data subject with a channel through which the data subject may, without charge by the data user, communicate the data subject's consent to the intended use.

(3) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.

(4) The information provided under subsection (2)(a) and (b) must be presented in a manner that is easily understandable and, if in written form, easily readable.

(5) Subject to section 35D, a data user who uses a data subject's personal data in direct marketing without

taking each of the actions specified in subsection (2) commits an offence and is liable on conviction to a fine of $500,000 and to imprisonment for 3 years.

(6) In any proceedings for an offence under subsection (5), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(7) In any proceedings for an offence under subsection (5), the burden of proving that this section does not apply because of section 35D lies on the data user.

35D. Circumstances under which section 35C does not apply

(1) If, before the commencement date—

(a) a data subject had been explicitly informed by a data user in an easily understandable and, if informed in writing, easily readable manner of the intended use or use of the data subject's personal data in direct marketing in relation to a class of marketing subjects;

(b) the data user had so used any of the data;

(c) the data subject had not required the data user to cease to so use any of the data; and

(d) the data user had not, in relation to the use, contravened any provision of this Ordinance as in force as at the time of the use,

then section 35C does not apply in relation to the intended use or use, on or after the commencement date, of the data subject's relevant personal data, as updated from time to time, in direct marketing in relation to the class of marketing subjects.

(2) If—

(a) a data subject's personal data is provided to a data user by a person other than the data subject (***third person***); and

(b) the third person has by notice in writing to the data user—

(i) stated that sections 35J and 35K have been complied with in relation to the provision of data; and

(ii) specified the class of marketing subjects in relation to which the data may be used in direct marketing by the data user, as consented to by the data subject,

then section 35C does not apply in relation to the intended use or use by the data user of the data in direct marketing in relation to that class of marketing subjects.

(3) In this section—

commencement date (本部生效日期) means the date on which this Part comes into operation;

relevant personal data (有關個人資料), in relation to a data subject, means any personal data of the data subject over the use of which a data user had control immediately before the commencement date.

35E. Data user must not use personal data in direct marketing without data subject's consent

(1) A data user who has complied with section 35C must not use the data subject's personal data in direct marketing unless—

(a) the data user has received the data subject's consent to the intended use of personal data, as described in the information provided by the data user under section 35C(2)(b), either generally or selectively;

(b) if the consent is given orally, the data user has, within 14 days from receiving the consent, sent a written confirmation to the data subject, confirming—

(i) the date of receipt of the consent;

(ii) the permitted kind of personal data; and

(iii) the permitted class of marketing subjects; and

(c) the use is consistent with the data subject's consent.

(2) For the purposes of subsection (1)(c), the use of personal data is consistent with the data subject's consent if—

(a) the personal data falls within a permitted kind of personal data; and

(b) the marketing subject in relation to which the data is used falls within a permitted class of marketing subjects.

(3) A data subject may communicate to a data user the consent to a use of personal data either through a response channel or other means.

(4) A data user who contravenes subsection (1) commits an offence and is liable on conviction to a fine of $500,000 and to imprisonment for 3 years.

(5) In any proceedings for an offence under subsection (4), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

35F. Data user must notify data subject when using personal data in direct marketing for first time

(1) A data user must, when using a data subject's personal data in direct marketing for the first time, inform the data subject that the data user must, without charge to the data subject, cease to use the data in direct marketing if the data subject so requires.

(2) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.

(3) A data user who contravenes subsection (1) commits an offence and is liable on conviction to a fine of $500,000 and to imprisonment for 3 years.

(4) In any proceedings for an offence under subsection (3), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

35G. Data subject may require data user to cease to use personal data in direct marketing

(1) A data subject may, at any time, require a data user to cease to use the data subject's personal data in direct marketing.

(2) Subsection (1) applies irrespective of whether the data subject—

(a) has received from the data user the information required to be provided in relation to the use of personal data under section 35C(2); or

(b) has earlier given consent to the data user or a third person to the use.

(3) A data user who receives a requirement from a data subject under subsection (1) must, without charge to the data subject, comply with the requirement.

(4) A data user who contravenes subsection (3) commits an offence and is liable on conviction to a fine of $500,000 and to imprisonment for 3 years.

(5) In any proceedings for an offence under subsection (4), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(6) This section does not affect the operation of section 26.

35H. Prescribed consent for using personal data in direct marketing under data protection principle 3

Despite section 2(3), where a data user requires, under data protection principle 3, the prescribed consent of a data

subject for using any personal data of the data subject in direct marketing, the data user is to be taken to have obtained the consent if the data user has not contravened section 35C, 35E or 35G.

Division 3

Provision of Personal Data for Use in Direct Marketing

35I. Application

(1) This Division does not apply if a data user provides, otherwise than for gain, personal data of a data subject to another person for use by that other person in offering, or advertising the availability, of—

(a) social services run, subvented or subsidized by the Social Welfare Department;

(b) health care services provided by the Hospital Authority or Department of Health; or

(c) any other social or health care services which, if not provided, would be likely to cause serious harm to the physical or mental health of—

(i) the individual to whom the services are intended to be provided; or

(ii) any other individual.

(2) This Division does not apply if a data user provides personal data of a data subject to an agent of the data user for use by the agent in carrying out direct marketing on the data user's behalf.

35J. Data user to take specified action before providing personal data

(1) A data user who intends to provide a data subject's personal data to another person for use by that other person in direct marketing must take each of the actions specified in subsection (2).

(2) The data user must—

(a) inform the data subject in writing—

(i) that the data user intends to so provide the personal data; and

(ii) that the data user may not so provide the data unless the data user has received the data subject's written consent to the intended provision;

(b) provide the data subject with the following written information in relation to the intended provision—

(i) if the data is to be provided for gain, that the data is to be so provided;

(ii) the kinds of personal data to be

provided;

(iii) the classes of persons to which the data is to be provided; and

(iv) the classes of marketing subjects in relation to which the data is to be used; and

(c) provide the data subject with a channel through which the data subject may, without charge by the data user, communicate the data subject's consent to the intended provision in writing.

(3) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.

(4) The information provided under subsection (2)(a) and (b) must be presented in a manner that is easily understandable and easily readable.

(5) A data user who provides personal data of a data subject to another person for use by that other person in direct marketing without taking each of the actions specified in subsection (2) commits an offence and is liable on conviction—

(a) if the data is provided for gain, to a fine of $1,000,000 and to imprisonment for 5 years; or

(b) if the data is provided otherwise than for gain, to a fine of $500,000 and to imprisonment for 3 years.

(6) In any proceedings for an offence under subsection (5), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

35K. Data user must not provide personal data for use in direct marketing without data subject's consent

(1) A data user who has complied with section 35J must not provide the data subject's personal data to another person for use by that other person in direct marketing unless—

(a) the data user has received the data subject's written consent to the intended provision of personal data, as described in the information provided by the data user under section 35J(2)(b), either generally or selectively;

(b) if the data is provided for gain, the intention to so provide was specified in the information under section 35J(2)(b)(i); and

(c) the provision is consistent with the data subject's consent.

(2) For the purposes of subsection (1)(c), the provision of personal data is consistent with the data subject's consent if—

(a) the personal data falls within a permitted kind of personal data;

(b) the person to whom the data is provided falls within a permitted class of persons; and

(c) the marketing subject in relation to which the data is to be used falls within a permitted class of marketing subjects.

(3) A data subject may communicate to a data user the consent to a provision of personal data either through a response channel or other written means.

(4) A data user who contravenes subsection (1) commits an offence and is liable on conviction—

(a) if the data user provides the personal data for gain, to a fine of $1,000,000 and to imprisonment for 5 years; or

(b) if the data user provides the personal data otherwise than for gain, to a fine of $500,000 and to imprisonment for 3 years.

(5) In any proceedings for an offence under subsection (4), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

35L. Data subject may require data user to cease to provide personal data for use in direct marketing

(1) A data subject who has been provided with information by a data user under section 35J(2)(b) may, at any time, require the data user—

(a) to cease to provide the data subject's personal data to any other person for use by that other person in direct marketing; and

(b) to notify any person to whom the data has been so provided to cease to use the data in direct marketing.

(2) Subsection (1) applies irrespective of whether the data subject has earlier given consent to the provision of the personal data.

(3) A data user who receives a requirement from a data subject under subsection (1) must, without charge to the data subject, comply with the requirement.

(4) If a data user is required to notify a person to cease to use a data subject's personal data in direct marketing under a requirement referred to in subsection (1)(b), the data user must so notify the person in writing.

(5) A person who receives a written notification from a data user under subsection (4) must cease to use the personal data in direct marketing in accordance with

the notification.

(6) A data user who contravenes subsection (3) commits an offence and is liable on conviction—

(a) if the contravention involves a provision of personal data of a data subject for gain, to a fine of $1,000,000 and to imprisonment for 5 years; or

(b) in any other case, to a fine of $500,000 and to imprisonment for 3 years.

(7) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine of $500,000 and to imprisonment for 3 years.

(8) In any proceedings for an offence under subsection (6) or (7), it is a defence for the data user or person charged to prove that the data user or person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(9) This section does not affect the operation of section 26.

35M. Prescribed consent for providing personal data for use in direct marketing under data protection principle 3

Despite section 2(3), where a data user requires, under data protection principle 3, the prescribed consent of a data subject for providing any personal data of the data subject to another person for use in direct marketing, the data user is to be taken to have obtained the consent if the data user has not contravened section 35J, 35K or 35L.".

New — By adding—

"**23A. Section 45 amended (Protection of witnesses, etc.)**

Section 45(1), after "but any"—

Add

"enactment or".".

24 — By deleting subclause (1) and substituting—

"(1) Section 46(1)—

Repeal

"and (3)"

Substitute

", (3), (7) and (8)".".

24(3) — In the proposed section 46(2)(a), by adding "subject to subsection (8)," before "disclosing".

24(7) By deleting the proposed section 46(7) and (8) and substituting—

"(7) The Commissioner may, for the purpose of enabling or assisting an authority of a place outside Hong Kong to perform a relevant function of that authority, disclose matters to that authority, if—

(a) that authority has undertaken to be bound by the secrecy requirements imposed by the Commissioner; and

(b) in the opinion of the Commissioner, there is in force in that place any law which is substantially similar to, or serves the same purposes as, this Ordinance.

(8) The Commissioner may, for the proper performance of the Commissioner's functions or the proper exercise of the Commissioner's powers under this Ordinance, disclose matters to an authority of a place outside Hong Kong that performs a relevant function, if—

(a) that authority has undertaken to be bound by the secrecy requirements imposed by the Commissioner; and

(b) any of the conditions specified in subsection (9) is satisfied.

(8A) In subsections (7) and (8)—

relevant function (有關職能), in relation to an authority of a place outside Hong Kong, means a function relating to investigation into a suspected contravention, and enforcement, of legal or regulatory requirements in that place concerning the protection of privacy of individuals in relation to personal data.".

24(7) In the proposed section 46(9)(e), in the Chinese text, by deleting "擁有" (whenever appearing) and substituting "持有".

27(1) In the proposed section 50(1), by adding "and, if appropriate, prevent any recurrence of "after "to remedy".

27(1) By deleting the proposed section 50(1A)(a), (b) and (c) and substituting—

"(a) state that the Commissioner is of the opinion referred to in subsection (1) and the reason for that opinion;

(b) specify—

(i) the requirement which, in the opinion of the Commissioner, is being or has been contravened; and

(ii) the act or omission that constitutes the contravention;

(c) specify the steps that the data user must take (including

ceasing any act or practice) to remedy and, if appropriate, prevent any recurrence of the contravention;".

27 By deleting subclauses (4) and (5) and substituting—

"(4) Section 50—

Repeal subsection (3)

Substitute

"(3) The steps specified in an enforcement notice to remedy and, if appropriate, prevent any recurrence of any contravention to which the notice relates may be framed—

(a) to any extent by reference to any approved code of practice; and

(b) so as to afford the relevant data user a choice between different ways of remedying and, if appropriate, preventing any recurrence of the contravention.".".

28 In the proposed section 50B(1)(a), (b) and (c), by deleting "any other person" and substituting "a prescribed officer".

28 In the proposed section 50B(1)(a), in the English text, by deleting "that other person" and substituting "the officer".

28 In the proposed section 50B(1)(c)(i) and (ii), by deleting "that other person" and substituting "the officer".

32 In the proposed section 59A(1), in the English text, by deleting "of a minor" and substituting "of the minor".

32 By deleting the proposed section 59A(2).

33 In the proposed section 60A(1) and (2), by adding "a request under" before "a provision of".

33 In the proposed section 60B(a), by adding ", by any rule of law" after "enactment".

34 In the proposed section 63B(3), by deleting "sale, transfer or disclosure"

and substituting "transfer, disclosure or provision for gain".

34 In the proposed section 63B(6), by deleting the definition of ***sell***.

34 In the proposed section 63B(6), by adding—

"***provision for gain*** (為得益而提供), in relation to personal data, means provision of the data in return for money or other property, irrespective of whether—

(a) the return is contingent on any condition; or

(b) the person who provides the data retains any control over the use of the data.".

34 By deleting the proposed section 63C(2).

34 By deleting the proposed section 63D and substituting—

"**63D. Transfer of records to Government Records Service**

Personal data contained in records that are transferred to the Government Records Service is exempt from the provisions of data protection principle 3 when the records are used by the Government Records Service solely for the purpose of—

(a) appraising the records to decide whether they are to be preserved; or

(b) organizing and preserving the records.".

35 By deleting the clause and substituting—

"**35. Section 64 substituted**

Section 64—

Repeal the section

Substitute

"**64. Offences for disclosing personal data obtained without consent from data users**

(1) A person commits an offence if the person discloses any personal data of a data subject which was obtained from a data user without the data user's consent, with an intent—

(a) to obtain gain in money or other property, whether for the benefit of the person or another person; or

(b) to cause loss in money or other property to the data subject.

(2) A person commits an offence if—

(a) the person discloses any personal data

of a data subject which was obtained from a data user without the data user's consent; and

(b) the disclosure causes psychological harm to the data subject.

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine of $1,000,000 and to imprisonment for 5 years.

(4) In any proceedings for an offence under subsection (1) or (2), it is a defence for the person charged to prove that—

(a) the person reasonably believed that the disclosure was necessary for the purpose of preventing or detecting crime;

(b) the disclosure was required or authorized by or under any enactment, by any rule of law or by an order of a court;

(c) the person reasonably believed that the data user had consented to the disclosure; or

(d) the person—

(i) disclosed the personal data for the purpose of a news activity as defined by section 61(3) or a directly related activity; and

(ii) had reasonable grounds to believe that the publishing or broadcasting of the personal data was in the public interest.".".

36 In the heading, by deleting "**Section 64A**" and substituting "**Sections 64A and 64B**".

36 By renumbering the proposed section 64A as section 64B.

36 By adding before the proposed section 64B—

"**64A. Miscellaneous offences**

(1) A data user who, without reasonable excuse, contravenes any requirement under this Ordinance commits an offence and is liable on conviction to a fine at level 3.

(2) Subsection (1) does not apply in relation to—

(a) a contravention of a data protection principle;

(b) a contravention that constitutes an offence under section 14(11), 14A(5A), (6) or (7), 15(4A) or (7), 18(5), 22(4), 31(4), 32(5), 44(10), 46(10), 50A(1) or (3), 50B(1), 63B(5) or 64(1) or (2); or

(c) a contravention of any requirement under Part VIA.".

38 In the proposed section 66A(2)(b), in the Chinese text, by deleting "鑠" and substituting "爍".

39(19) In the proposed section 2(3), in the Chinese text, by deleting "手段或其他手段" and substituting "規範方法或其他方法".

39(26) In the proposed section 4(2), in the Chinese text, by deleting "手段或其他手段" and substituting "規範方法或其他方法".

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Food and Health to Dr LEUNG Ka-lau's supplementary question to Question 2

As regards the turnover rate of Case Managers of the Hospital Authority, the relevant information is provided at Annex.

Annex

Year	*Progress of Case Management Programme*	*Number of Case Managers*	*Turnover Rates*
2010-2011	Launched in three districts (Kwun Tong, Kwai Tsing and Yuen Long)	81	0%
2011-2012	Extended to five more districts (Eastern, Sham Shui Po, Sha Tin, Tuen Mun and Wan Chai)	155	2%