

# OFFICIAL RECORD OF PROCEEDINGS

**Wednesday, 12 December 2001**

**The Council met at half-past Two o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

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

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

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

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

THE HONOURABLE MIRIAM LAU KIN-YEE, J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

DR THE HONOURABLE TANG SIU-TONG, J.P.

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

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S.

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK

### **PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.  
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.  
THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.  
THE SECRETARY FOR JUSTICE

MR MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR THE CIVIL SERVICE

MR STEPHEN IP SHU-KWAN, G.B.S., J.P.  
SECRETARY FOR FINANCIAL SERVICES

DR YEOH ENG-KIONG, J.P.  
SECRETARY FOR HEALTH AND WELFARE

MRS REGINA IP LAU SUK-YEE, J.P.  
SECRETARY FOR SECURITY

MR LEE SHING-SEE, J.P.  
SECRETARY FOR WORKS

**CLERKS IN ATTENDANCE:**

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

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instrument	<i>L.N. No.</i>
Attachment of Income Order (Amendment) Rules 2001 .....	260/2001

**Other Papers**

- No. 37 — Queen Elizabeth Foundation for the Mentally Handicapped Report and Accounts 2000-2001
- No. 38 — Annual Report on The Police Children's Education Trust and The Police Education and Welfare Trust for the period 1 April 2000 to 31 March 2001
- No. 39 — Grantham Scholarships Fund  
Annual Report for the year 1 September 2000 to 31 August 2001
- No. 40 — The Sir Murray MacLehose Trust Fund  
Trustee's Report for the period 1 April 2000 to 31 March 2001
- No. 41 — Equal Opportunities Commission  
Annual Report 2000/01

**ORAL ANSWERS TO QUESTIONS**

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

## **Rising Number of Street Sleepers**

1. **MR MICHAEL MAK** (in Cantonese): *Madam President, to address the upsurge in the number of street sleepers, the Administration allocated \$8.73 million in April this year to three non-governmental organizations (NGOs) for implementing a three-year action plan to provide a series of services to street sleepers, including midnight outreaching visits, the provision of emergency fund, temporary accommodation, employment advice and job placement. However, the number of street sleepers has continued to rise from 1 203 by the end of April to 1 305 by the end of September. In this connection, will the Government inform this Council:*

- (a) of the operation and effectiveness of such services since their commencement;*
- (b) whether it has investigated the causes of the increase rather than decrease in the number of street sleepers over the half-year period after the above services were launched, and the corresponding measures in this regard; and whether it will consider allocating additional funds with a view to minimizing the number of street sleepers; and*
- (c) of the number of mentally ill persons among such street sleepers, and the services that have been provided to them?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): *Madam President, our overall policy is to help street sleepers leave the streets, achieve self-reliance, and re-integrate into the community.*

In addition to mainstream welfare services provided by the Social Welfare Department (SWD) and NGOs, specific services are also available to street sleepers. These include Comprehensive Social Security Assistance, five subvented residential hostels, two subvented day relief centres, and three dedicated Outreach Teams which also work with this vulnerable group.

- (a) Moreover, in response to the changing characteristics of street sleepers, the Administration has obtained \$8.7 million from the Lotteries Fund to implement a three-year action plan to help street

sleepers through a continuum of integrated services, with a view to augmenting the above services. Since May 2001, the three NGOs commissioned to operate the action plan have conducted outreach visits three to four nights per week between 10 pm to 2 am in order to contact street sleepers, especially those who return late to the places where they sleep. The three NGOs have reached 542 street sleepers by the end of November, and will continue to reach more in the remaining period. Of the 542 street sleepers reached, 268 street sleepers were willing to receive services.

Of the 268 street sleepers, 189 are aged 49 or below, 242 are in normal health, 240 have received formal education, and 197 have been sleeping on the streets for less than one year.

Clients are provided with a package of integrated and tailor-made services to cater for their residential, social, psychological, employment and financial needs.

On accommodation, 158 have been helped to move to private tenement, temporary shelters/urban hostels, singleton hostels or to other accommodation. The round-the-clock emergency shelter for street sleepers is also up and running with an occupancy rate of over 90%.

On employment assistance, 83 clients have been successfully matched with a job placement, through referrals to specialized employment units, the Employees Retraining Board, NGOs' Special Job Attachment Programme as well as with the private sector.

An in-built evaluative study will be conducted and its outcome will shed light on the effectiveness of the Plan, at the end of the three-year project.

- (b) According to the SWD's Street Sleepers Registry, the number of street sleepers has risen from 1 223 at the end of May 2001 to 1 340 at the end of October 2001.

Of the 1 340 street sleepers registered, 1 179 have given reasons for street sleeping. The major reasons are — "personal choice" — 297;

"become unemployed and had no income to pay rent in previous accommodation" — 261; and "could not find accommodation with affordable rent" — 158, and so on.

We will continue to closely monitor the number and profile of street sleepers, and the implementation of the three-year action plan. The Plan, we believe, is providing concrete assistance to this group and helping them to leave the streets.

- (c) Of the 1 340 street sleepers registered, 1 318 have given information about their health. Ninety-eight were suspected to be mentally ill.

In addition to the comprehensive range of services already mentioned, the SWD and NGO outreach teams counsel them and refer them for medical treatment and other assistance, as appropriate. For those street sleepers who exhibit behaviour harmful to themselves or others, medical social workers with specialized psychiatric training provide emergency outreach service and professional social work support.

Health professionals from the Hospital Authority (HA) diagnose whether they are suffering from mental illness and provide appropriate psychiatric treatment ranging from medication, psychological assessment, counselling to psychosocial rehabilitation. These can take place in various settings, including hospitals, out-patient clinics or in the community. Community Psychiatric Teams of the HA provide a comprehensive range of mental health services in the community setting, mainly for discharged psychiatric patients, to facilitate their rehabilitation and reintegration into society.

**MR MICHAEL MAK** (in Cantonese): *Madam President, since Hong Kong is an international metropolis, has the Government ever assessed the negative impact of street sleepers, in particular those who have not fully recovered from mental illness, on the outlook and tourism of Hong Kong? If so, what is its target? If not, what are the reasons?*

**PRESIDENT** (in Cantonese): Mr Michael MAK, is your supplementary question about the impact of street sleepers on the outlook of Hong Kong, and is this directly related to your main question?

**MR MICHAEL MAK** (in Cantonese): *Madam President, yes it is. The Secretary pointed out that according to the Registry, 98 street sleepers were suspected to be mentally ill. Street sleepers whose illnesses are not under control will definitely have a negative impact on the outlook of Hong Kong.*

**PRESIDENT** (in Cantonese): Mr Michael MAK, I am sorry. I think your supplementary question is not directly related to the main question, so I would not allow you to ask this question.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the Secretary mentioned in his main reply that according to the Registry of the SWD, there are currently 1 340 street sleepers; but the three NGOs can only reach 542 street sleepers, out of whom only 158 are offered accommodation. Having seen these figures, I think that resources allocated by the Government in this area are still inadequate for only less than half of the total number of street sleepers have been reached, and an even smaller proportion offered accommodation. May I ask whether the Government will increase its funding so that more street sleepers can be reached as soon as possible, in order to have a better understanding of their difficulties and help them move into proper housing?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, apart from such special outreach services, there is also a unit in the SWD specially tasked to deal with the problem of street sleepers. The staff of this unit contact street sleepers on a daily basis, but some street sleepers are unwilling to move to other places. At present, about 30% of the street sleepers sleep on the streets as a personal choice. We will take into account the wishes of street sleepers to see whether they are willing to accept our services. If there is a need to increase resources, then this is definitely not a problem. We have now got hostel places especially for street sleepers, but sometimes they may find the location of those hostels inconvenient and request to have a choice of location.

Therefore, they may be unwilling to move into our hostels. At present, the occupancy rate of our hostels only ranges from 70% to 80%. However, for some temporary hostels, street sleepers are not allowed to stay during the day and can only spend the night there. We also have some singleton hostels where street sleepers can stay, but sometimes they may want to choose the location and may not move into those referred by us. At present, the three-year action plan of NGOs are making very good progress and has offered assistance to many street sleepers, but we will continue to contact the street sleepers.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, the Secretary pointed out in part (c) of his main reply that of the 1 340 street sleepers registered, 98, that is about 7%, were suspected to be mentally ill. This is comparable to the percentage of mentally ill persons, which is also about 7%, among the general public, and that is not particularly high. Some social workers have to come into direct contact with these mentally ill street sleepers. The Secretary mentioned in his main reply that social workers with specialized psychiatric training would provide social work support. However, will the Government consider offering training to social workers who take positive actions in contacting mentally ill street sleepers, so that they can provide more effective and direct assistance to the mentally ill street sleepers?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the proposal of Mr LAW is very good. We will consider whether we can help mentally ill street sleepers by doing so, that is, by offering training to social workers who take positive actions in contacting mentally ill street sleepers and help them to refer such cases to the professionals.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I support the Government in allocating \$8.7 million to implement a three-year action plan, because I believe most people now support that street sleepers should be granted assistance. However, the Government pointed out in its main reply that, of the 268 street sleepers who are willing to accept its services, 189 are aged 49 or below. A large number of these people sleep on the streets because they do not have jobs or places to live. May I ask the Government, under the circumstances where there are cases of younger street sleepers with an incentive to work, when*

*it uses public funds, will it consider the factor that some street sleepers sleep on the streets because of unemployment and financial difficulties? Will it look into the possibility of adopting proactive and positive measures in helping street sleepers to seek employment before they make the streets their home, so as to solve this problem? Has the Government considered this approach?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, we certainly do not wish to see anyone becoming street sleepers. According to the information gathered during our annual surveys, we find that street sleepers take on street sleeping for many reasons. Some may have problems in getting along with their families; some have got used to sleeping on the streets and do not wish to change their lifestyles. Nowadays, there are more cases of younger people becoming street sleepers because they cannot find jobs and have financial difficulties. Our current action plan is targeted at such people. I have provided some figures earlier showing that the successful rate of this plan is quite high, for about 30% of the street sleepers found jobs with our assistance. Therefore, we will continue to work hard in this area. As for preventive measures, I think this is a problem for the community as a whole. How are we supposed to know who will become street sleepers and who will have financial difficulties? All these fall within the mainstream services of the SWD. In this regard, I believe the SWD can help.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han, has your supplementary question not been answered?

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question.*

**PRESIDENT** (in Cantonese): Miss CHAN, which part of your supplementary question has not been answered?

**MISS CHAN YUEN-HAN** (in Cantonese): *The main reply of the Secretary says that street sleepers have taken on street sleeping for the major reasons of*

*"become unemployed and had no income to pay rent in previous accommodation" and "could not find accommodation with affordable rent". If the Government can offer unemployment assistance to these people before they become street sleepers, then they do not have to sleep on the streets. My supplementary question asked whether the Government had plans to do so, but the Secretary has not given me an answer.*

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

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I did answer this supplementary question. In fact, this is what we have been doing with our mainstream welfare services. We have provided a lot of services to help those people in financial difficulties, in order to save them from sleeping on the streets.

**MR WONG SING-CHI** (in Cantonese): *Madam President, the Secretary pointed out in part (c) of his main reply that 1 340 street sleepers have already registered. It has been widely reported that this group of street sleepers is younger in age. May I know, of the 1 340 street sleepers, how many of them are under 25? Has the Government tried to find out why these young street sleepers are sleeping on the streets, and how it can solve their problems?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, according to the survey conducted by us in 2001, 45 out of the 1 150 street sleepers were under 29. However, we do not have any information on why these street sleepers are sleeping on the streets.

**MR WONG SING-CHI** (in Cantonese): *Madam President, does it mean that the Secretary cannot answer my supplementary question? Will the Government follow up on this issue so as to study the profile of such young street sleepers and find ways to help them? My supplementary question asked if the Government had done so? Is the Secretary telling us that the Government has not done so?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): It is not that we have not done so, but rather we have not got a breakdown on age.

**PRESIDENT** (in Cantonese): This Council has already spent 16 minutes on this question. Last supplementary question.

**MISS LI FUNG-YING** (in Cantonese): *Madam President, the Secretary pointed out in part (a) of his main reply that the Government has done quite well in job referrals and 83 of its clients have found jobs. May I ask the Secretary to provide us with more specific information the kind of jobs these 80-odd people are engaged in and their income level, so that we can have a better understanding?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I will answer Miss LI's supplementary question in writing. (Annex I)

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

### **Practices in Insurance Industry**

2. **MR IP KWOK-HIM** (in Cantonese): *Madam President, it is learnt that there are cases in which insurance companies refuse to provide third party risks insurance cover for vehicle owners who have been involved in several traffic accidents; and there are also complaints from businessmen in the taxi trade that, in granting mortgage loans on taxi licences and motor vehicles, finance companies require them to take out motor vehicle insurance from those insurance companies with which such finance companies have business association. In this connection, will the Government inform this Council:*

- (a) *of the circumstances under which insurance companies can decline applications for insurance cover for third party risks and whether the Office of the Commissioner of Insurance (OCI) has issued guidelines to insurance companies in this respect;*

- (b) *of the government department or statutory body which is responsible for overseeing the fees charged by insurance companies, and of the details of such work; and*
- (c) *whether it has assessed if insurance companies' association with finance companies will give rise to unfair competition in the insurance market; if the result of the assessment is in the affirmative, whether and how the OCI will deal with the matter?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, our reply to the Honourable IP Kwok-him's questions is as follows:

- (a) The insurance industry is one of risk assessment and premium setting. An insurance company usually takes into account the risks involved and other commercial considerations when deciding whether to accept an application for motor vehicle third party risks insurance cover, and if so, how to set the level of premium. The assessment criteria include: the purpose, age and conditions of the vehicle; number of claims made in the past and amount paid; as well as the driving records of the concerned persons; and so on. How to assess the risks involved and to set the premium are commercial decisions of the insurance companies.

Where the risks are assessed to be excessive, a higher deductible may be adopted or additional premiums may be charged. Some insurance companies may even decline to provide insurance cover. Any persons who face difficulties in applying for motor vehicle insurance cover may approach the Hong Kong Federation of Insurers (HKFI) for assistance. At present, 84 insurance companies in Hong Kong are authorized to provide direct insurance cover for motor vehicle third party risks. There is adequate competition in the market. As risk assessment is the commercial decision of individual insurance companies, it is not appropriate for the OCI to interfere with such decision. The OCI has not issued guidelines to insurance companies on "refusal of application for third party risks insurance". We believe that an effective way to meet the community's demand for motor vehicle insurance products (including third party risks) is to ensure competition and healthy development of the insurance industry.

- (b) How to set the premium and assess the risks involved are commercial decisions of the insurance companies. We do not intend to interfere with the operation of the market. Section 26(3A) of the Insurance Companies Ordinance also clearly stipulates that the Insurance Authority shall not intervene with the terms or premiums of policies offered by insurance companies. In jurisdictions with well developed insurance markets such as the United Kingdom, Australia, Singapore, and so on, the authorities concerned also do not interfere with the level of premium set by insurance companies.

As there are 84 insurance companies in Hong Kong which are authorized to provide direct insurance cover for motor vehicle third party risks, we believe that there is adequate competition in the local market which can adjust the premium level effectively. As a matter of fact, insurance companies have all along been adjusting the fees of their insurance products according to market conditions and competition among insurers.

- (c) The Insurance Companies Ordinance does not impose any restriction on the business partners of insurance companies. The so-called "finance companies" may be authorized institutions under the Banking Ordinance, or money lenders licensed under the Money Lenders Ordinance. We understand that authorized institutions play a major role in providing loans on taxi licences and vehicle mortgages. The Hong Kong Monetary Authority (HKMA) has made enquiries with the authorized institutions involved in providing loans on taxi licences and vehicle mortgages, in order to find out the practice in arranging motor vehicle insurance. It was found that the relevant authorized institutions do not require their customers to take out motor vehicle insurance from designated insurance companies. The practice is to allow customers to choose from a list of insurance companies. In general, the list would consist of more than 10 insurance companies, most of which have no direct association with the authorized institutions.

Besides, there are over 200 authorized institutions in Hong Kong, for example, over 100 licensed banks. Most of them provide loans on taxi licences or vehicle mortgages. Therefore, we believe that

there is adequate competition in the market and customers also have adequate choices.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, colleagues in this Chamber know very well that under the law, vehicle owners must take out third party risks insurance cover otherwise it is against the law and it will be a serious offence. At present, professional taxi drivers complain that in case of accidents, even though it is not something vehicle owners wish to see, it is just the problem of the drivers concerned as insurance companies refuse to provide third party risks insurance cover for them. As a result, they are forced to transfer the ownership of the vehicles because, very often, applications for insurance cover for third party risks can only be taken out under the names of their spouses or children. The Secretary has explained clearly in his main reply that "any persons who face difficulties in applying for motor vehicle insurance cover may approach the HKFI for assistance". May I ask the Secretary, if similar cases arise in future, whether he can guarantee that as long as they approach the HKFI for assistance, they can secure the third party risks insurance cover for their vehicles successfully without taking the trouble of transferring the ownership of their vehicles, so that enforcement of the existing legislation can be effected?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I would like to thank Mr IP for his supplementary. In fact, we must realize that although Hong Kong is a small place, I have mentioned in my main reply earlier that there are 84 insurance companies in Hong Kong which are authorized to provide direct insurance cover for motor vehicle third party risks. If we look around the world, we may find that not many places will have so many companies to provide third party risks insurance cover. Certainly, we cannot force individual companies to provide third party risks insurance cover for individual policy-holders, because those companies have to "do business" and they have to take into account the driving records of the applicants and information in other aspects before making any decision. I think that even in overseas countries, not everybody can take out insurance. For example, if a young man buys a beautiful sports car, but he has just got his driving licence not long ago, then the insurance company may probably decline his application for insurance or set the premium at an exceedingly high level. I think it is impossible to require insurance companies to accept every application for

insurance cover. In other words, we should not force the insurance companies concerned to accept all applications, because they have to "do business", thus they have to take into account the risks involved as well as the premium level. Insofar as I understand it, the current situation is not a matter of difficulty in taking out insurance cover, but under individual circumstances, perhaps the applicants have such a poor record of claims that the premium level has to be increased drastically. Concerning my point about the HKFI being willing to help, I mean that if any person is unable to take out the third party risks insurance cover, the HKFI is willing to recommend some other insurance companies for their reference.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, the thrust of my supplementary is whether vehicle owners can have the insurance cover taken out without transferring the ownership after filing a complaint? The last sentence of my supplementary was to facilitate enforcement of the existing legislation. Under the legislation, it is a serious offence, but the Secretary has not answered that part.*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I think I have answered the supplementary of Mr IP. Nobody can force individual companies to accept an application for insurance, because that should be determined by the market. Actually, as far as I am aware, nobody will fail to take out insurance cover, but perhaps the premium may be very high. Even in overseas countries, the situation will be the same. For example, if a driver has caused frequent traffic accidents because of drink driving, then the insurance company may refuse to provide insurance cover for the driver concerned. The advantage of Hong Kong is that despite the small size of Hong Kong, and for instance, only 30 insurance companies in Singapore are authorized to provide insurance cover for motor vehicles, Hong Kong has 84 such companies, there is adequate competition in our market. Actually, insurance companies really wish to "do business", therefore I do not think that they will give away business opportunities. At worst, they will only raise the premium level for higher risks. Just as I have mentioned in my reply earlier, we certainly cannot require individual companies to provide insurance cover for certain people, but Hong Kong has an adequate number of insurance companies and there is adequate competition in the market.

**MR BERNARD CHAN** (in Cantonese): *Madam President, I think the crux of the issue is that the insurance industry has been suffering losses in the past five years. Just now the Secretary mentioned that there are 84 insurance companies which are authorized to provide insurance cover for motor vehicle third party risks. However, of the complaints I received from the industry, many owners of taxis and minibuses pointed out that those two specific types of vehicles did not really have many choices as far as insurers are concerned. Insofar as I understand it, there are probably only a handful of insurance companies for taxis and minibuses insurance, and the reason they have a larger market share is that their prices are really very low, but the 84 companies mentioned by the Secretary were unwilling to provide the insurance at such low prices. May I ask the Secretary if he is aware of the situation? Moreover, to attract other companies to enter the market, it may be necessary to raise the premiums, but still it will not help to solve the problem raised by the Honourable IP Kwok-him just now. May I ask the Secretary of his views.*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I would like to thank Mr CHAN for his supplementary. I believe Mr CHAN knows the insurance market better than I do, and his company, I believe, also provides insurance cover for motor vehicle third party risks. Just as Mr CHAN has said, I think the competition is very keen. If we take a look at the overall performance of companies which provide insurance cover for motor vehicle third party risks, then we may find that in the past few years, all of them have been making losses. For instance, the loss last year exceeded \$300 million, and in the past 10 years, the total loss has exceeded \$2 billion, which is quite staggering. In the past, individual companies providing insurance cover for motor vehicle third party risks did cut their prices to compete with rivals, which has led to losses in the entire industry. Certainly, it is not a healthy phenomenon, and if any insurance company should sustain losses on a long-term basis, the OCI will surely pay close attention to the solvency of that company, and will be concerned about whether the company is in financial difficulties. For this reason, I think this situation should not continue indefinitely. Mr CHAN also knows well that premium of third party risks insurance cover for such motor vehicles as taxis and minibuses has gone up significantly, I believe the reason is the market force mentioned by me earlier. In fact, insurance companies have to compare the accident rate among minibuses, taxis and private cars, or to consider the driving records of the relevant drivers. I think insurance is about risk assessment and reasonable pricing. Under this

circumstance, I believe there were pricing battles in the past, therefore, generally speaking, the gap between the premium level of third party risks insurance cover for taxis and private cars was not that big in the past, but in the last year or so, the premium of the former has gone up significantly, reflecting the relevant risks. I believe insurance companies will make the relevant decision having regard for their own solvency position.

**MR JASPER TSANG** (in Cantonese): *Madam President, the Secretary mentioned in part (c) of his main reply that finance companies providing vehicle mortgages are divided mainly into two categories: authorized institutions under the Banking Ordinance, and money lenders licensed under the Money Lenders Ordinance. As to the first category, the Secretary replied that he had made enquiries with the HKMA and found that the relevant authorized institutions did not require their customers to take out motor vehicle insurance from designated insurance companies. However, he did not mention companies of the second category, that is, the case with money lenders. Does the Secretary think that money lenders have not required their customers to take out insurance from designated insurance companies, or does he basically not encourage the public to patronize money lenders?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): *Madam President, I would like to thank Mr TSANG for his supplementary. Perhaps I have not made my main reply very clear. I have not mentioned much about money lenders because insofar as I am aware, most finance companies providing mortgage services to vehicles or taxis have connection with banks, as these service providers are mostly affiliated deposit-taking companies under those authorized institutions or banks. We may say that most businesses are conducted by authorized institutions. Therefore, I have mentioned in my main reply that I have looked into the matter and did not find the said problem. With regard to money lenders, their number is relatively small, and I do not know the existence of the said problem among them.*

**MS MIRIAM LAU** (in Cantonese): *Madam President, the Secretary said earlier that the situation in Hong Kong was pretty satisfactory because we have 84 insurance companies to provide direct insurance cover for motor vehicle third party risks and there was adequate competition in the market, therefore, it was*

*not necessary to issue any guidelines to insurance companies on "refusal of application for third party risks insurance". The Honourable Bernard CHAN pointed out a moment ago that the reality was not that satisfactory. To the best of my knowledge, as far as taxis and minibuses are concerned, there are only three insurance companies which provide insurance cover for third party risks. It shows that competition in the market is inadequate. My supplementary is: Will the Secretary keep himself abreast with the actual situation and change his mind to issue guidelines to insurance companies on "refusal of application for third party risks insurance" for taxis, minibuses, or commercial vehicles? Furthermore, since there are really too many complaints in this connection, will the Government consider the establishment of a standing complaints channel and allow the industry to vent their grievances and file complaints with government departments, with a view to seeking a solution to the problem? The fact that many vehicle owners are able to take out insurance cover does not mean that there is no problem at all, because many people in the industry only yield to a handful of insurance companies, being obliged to accept some harsh terms and conditions.*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, if the insured have any complaints, they can lodge them with the OCI at any time. With regard to Ms LAU's that there are only three insurance companies providing insurance cover for third party risks for taxis and minibuses, I believe it is a matter of opinion with regard to the size of this figure. Hong Kong is a small place, and the most important thing is genuine competition. I believe Ms LAU knows very well that competition is indeed very fierce. In the past, the premium level was indeed very low, and figures clearly indicated that insurance companies providing third party risks insurance cover had suffered losses: \$300 million in last year, and recurrent losses were registered in the past five years. It is sufficient proof of the intensity of competition in the market, and despite the losses, insurance companies have to fight for policies. If Honourable Members still consider that not adequate, then I have nothing more to say. With regard to the guidelines, of course, we will monitor the situation, and we are prepared to review the situation to see whether we should issue any guidelines.

**MS MIRIAM LAU** (in Cantonese): *Madam President, the Secretary has not answered whether a complaints channel will be established.*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I think I have replied that. I said that if there were any complaints, the insured would be welcomed to lodge them with the OCI.

**PRESIDENT** (in Cantonese): We have spent precisely 18 minutes on this question. We shall now proceed to the third question.

### **Remuneration and Fringe Benefits of Civil Servants**

3. **MR JAMES TIEN** (in Cantonese): *Madam President, as many people have criticized the remuneration and fringe benefits of civil servants as being far better than those of the employees of comparable ranks in the private sector, will the Government inform this Council whether it plans to comprehensively compare the remuneration and fringe benefits of civil servants with those of the employees of comparable ranks in the private sector; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, during the recent public discussion on civil service pay, there are concerns in some quarters that other than the starting salary levels which were reviewed in 1999, the Administration has not reviewed the salary levels beyond the entry ranks for over a decade. As a result, the broad comparability of civil service pay with private pay for certain grades and ranks may have been eroded over time. Being a responsible government, we need to address these concerns; hence we have undertaken to consider as a matter of priority whether the current civil service pay policy and system are in keeping with present-day circumstances. Following earlier discussions with staff representatives, we are in the process of drawing up concrete proposals to tackle the matter. Our initial thinking is to cover the total remuneration package, including salaries and fringe benefits, in the exercise. We appreciate that this is a subject of considerable public interest and will take a decision on the way forward as soon as possible.

I would like to emphasize that this is a highly complex subject and we need to approach it with care. As we proceed, we shall keep two factors in the forefront of our considerations. First, a stable and motivated civil service is a cornerstone for the stability and prosperity of Hong Kong. We must be able to

continue to offer an attractive and worthwhile career, which includes appropriate pay and conditions of service, to our civil servants. Second, as a civil service of the people and for the people, we will at every step take full account of the wider costs and benefits to the community as well as the prevailing political and economic realities.

**MR JAMES TIEN** (in Cantonese): *Madam President, I thank the Government for coming to grips with this problem. In the second paragraph of the main reply, the Government said it would keep two factors in the forefront of its considerations. First, it must ensure the Civil Service is an attractive and worthwhile career. Second, it would at every step take full account of the wider costs and benefits to the community. I think when the Secretary discusses the issue with staff representatives, the most important consideration is an assessment of the difference, if any, between civil service pay and private pay. I think this is a very important factor. Will the Government inform this Council whether it agrees with me and whether it will consider the factor?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): *Madam President, in finding out whether the civil service pay policy and system are in keeping with the present-day circumstances, many issues are involved, including salary policy, salary structure, a contrast between various grades and ranks, and indeed the difference, if any, between civil service pay and private pay for work of a similar nature. All these factors will be considered by us. And as I mentioned in the main reply, in my earlier discussions with staff representatives, I indicated to them that to carry out the review we had to compare salary levels in the Civil Service and those in the private sector. But the review would be a very complicated exercise. How should we conduct the review? What methodology should be used for the comparison? Can there be a comparison at all in jobs such as the work of a policeman or a fireman or even some very specialized clerical work? All these are issues that we have to look into in the future and when there is an outcome, we may then make a decision.*

**MRS SELINA CHOW** (in Cantonese): *Madam President, in the first paragraph of his reply, the Secretary referred to an undertaking. What is the undertaking? It was an undertaking about an expeditious study. And then he said the*

*Government would take a decision on the way forward as soon as possible. Next he said that the matter was a highly complex subject and the Government needed to approach it with care. When he answered the supplementary question just now, he said many issues were involved. He also said if the Government was to carry out the review, it would have to find out how to commence. After listening to the Secretary say all this, I am worried whether the Government is determined to conduct the study and how quickly it would proceed with it. Will the Secretary inform this Council whether there is an actual timetable for the review? If a private organization has to conduct a similar study, it would take at most several months to complete. Our Government is renowned for efficiency. So, will the Secretary inform this Council when in his present plan the review will be completed?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, to review the civil service pay policy and system would indeed take considerable time because in addition to several hundred grades and a thousand-odd ranks and a variety of jobs that we are talking about here, the determination of salaries and pay system are a very complex issue. For example, in 1986, we conducted a survey on salary levels and it took a year to complete. Moreover, our review of the ranks and grades in the Civil Service in 1989 took two years to complete. Therefore, if we must carry out the review, I believe we need at least a year to complete it. I have to stress that the 1986 survey, despite taking a year to complete, led to some controversies and eventually the Government had to set up a commission of inquiry to deal with it. For the review we are talking about this time, we must, as I said in my main reply, ensure that at every step staff are consulted and reference made to opinions in the community. Thus, it is indeed a very complex subject, but that does not mean the Government is not determined to deal with it. If I say we would take a decision as soon as possible, I trust time would prove my point.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, some civil service groups have said it is not entirely appropriate in terms of timing to conduct a review now on salary level — which has not been done for 10 years — because private pay is volatile now so the data to be collected may not be accurate or fair. Will the Government inform this Council of its views on this point?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, the view of Mr TAM is exactly the worry expressed by some of the staff representatives during my recent discussions with them. We will consider that view. But I think we need to realize one point. When we conduct a comprehensive review on the civil service pay policy and system, we must consider the comparability between civil service pay and private pay. As regards how the comparison should be made and the time to collect data and the need to take economic conditions into account, we must in future study the details thereto. We will certainly consider all the factors in making a decision.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, in the first paragraph of his reply, the Secretary mentioned studying the whole remuneration package. Will the Secretary inform this Council whether the review would be conducted by civil servants? If yes, would the review be objective? Would consideration be given to commissioning an external company to study the civil service remuneration package, including salaries and fringe benefits?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, we have a standing commission to study and determine civil service pay. While the Standing Commission on Civil Service Salaries and Conditions of Service (SCCS) is responsible for dealing with the pay of civilians, the Standing Committee on Disciplined Services Salaries and Conditions of Service (SCDS) is responsible for dealing with pay of the disciplined forces. If we carry out the review, both the SCCS and the SCDS will be involved. We will discuss with them both to see who is more suitable to carry out the review. From my past experience, I do not rule out the possibility of inviting external experts or consultants to carry out the pay review.

**MR LEUNG FU-WAH** (in Cantonese): *Madam President, in the first paragraph of his reply, and from his reply to the supplementary question a moment ago, the Secretary mentioned that basically there has not been any review since 1986 and 1989. The Secretary also indicated that the subject is very complex. Will the Secretary inform this Council whether consideration would be given to a periodic review in future, say a review every five years?*

*In this way, problems would then not accumulate to make the subject unduly complex as it is now, or a review is necessitated only because of financial pressure or pressure from some other quarters.*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I thank Mr LEUNG for his suggestion. Indeed, if we conduct a comprehensive review on the civil service pay policy and system this time, I hope that it will include the subject of how similar issues will be tackled in the future and the need to make a comparison of salary levels on a periodic basis.

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, in the second paragraph of his main reply, the Secretary mentioned that the Government would at every step take full account of the wider cost and benefits to the community as well as prevailing political and economic realities. Will the Government inform this Council of its understanding of the present political and economic realities and what criteria it would use to weigh benefits?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I trust different persons will have different views on the present political and economic realities. As far as the civil service pay policy is concerned, we certainly understand these realities constitute the crux of the matter. We also understand that many people opine that there is a need at the present time to conduct a rather comprehensive review on the civil service pay. This explains why we are conducting the review.

As regards what costs and benefits certain reforms will bring to the community, we focus on the fact that the Civil Service is not an independent organization. They are there to serve the community, to serve the people. People have certain views about the stability and efficiency of the Civil Service. Therefore, when we assess salaries, in particular, when we determine salary levels, we cannot just look at things in money terms. We should study value for money, and we should find out the salary level and conditions of service that are conducive to maintaining a stable and motivated civil servants.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, the Honourable James TIEN's main question is about a comprehensive review on the civil service pay. Will the Government inform this Council whether its pay trend survey is included in the review? In the past, some people criticized the pay trend survey as focusing on salary rises in the private sector to the neglect of pay cuts, retrenchment or situations where three persons have to do the work of four in the private sector. Will the Secretary inform this Council whether the pay trend survey is covered by the review?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): *Madam President, I have pointed out clearly in my main reply that the review is not just on the comparability of salary levels. Our focus will also be on a comprehensive review on the civil service pay policy and system. In terms of system, in addition to the determination of salary levels, we would also include the determination of annual salary adjustments. Therefore, when we formulate specific plans, we would also consider the adjustment as one of the factors. But I must stress that before we complete our review and establish a new system, the existing system, including the pay trend survey, will remain unchanged.*

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, a short while ago Members from the business sector requested the Secretary to conduct the review as soon as possible, but I hope the Secretary will not conduct a sloppy review, particularly when the Secretary has mentioned comparing civil service pay with private pay. Will the Secretary inform this Council whether he would aim at making civil service pay the cheapest one and whether private pay is the only factor that determines civil service pay and benefits? Will the Secretary inform this Council whether he would consider such factors as keeping the stability of the labour market, maintaining a clean civil service through high pay and the social responsibility of the Government as a good employer? I hope the Secretary would not aim at making civil service pay the cheapest one.*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): *Madam President, I stated in the second paragraph of my main reply clearly that we would approach the matter with great care and we would consider two important factors, including ensuring there is a stable and motivated civil service that provides quality services to the people. We also believe that as we proceed with this*

review, there will be ample opportunity for both civil servants and people from all sectors of society, including Members of this Council, to air their views.

**PRESIDENT** (in Cantonese): Honourable Members, though there are a number of Members in the queue, we have spent more than 16 minutes on this question. Therefore, I can only allow one last supplementary question.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, the Secretary mentioned repeatedly the need for a stable and motivated civil service. Will the Secretary inform this Council whether there are objective standards or indices of motivation, and if there are, what level has the motivation reached in the latest assessment as indicated by these standards or indices?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, we do not have a periodic survey on the motivation and morale of civil servants. Nor do we have a set of objective standards for these two elements. But then I do not think it is necessary to carry out a survey of this sort on a periodic basis because I do not think survey results can reflect fully the truth. That is why I do not think there is a need to carry out such a survey. We mention the factor, nevertheless, because it does indicate that in determining salary levels we cannot consider money alone. We must determine whether a certain salary, coupled with other service conditions and work prospects, can motivate people with talent to stay in the Civil Service to serve the people with motivation. I hope Members will not forget that civil servants are there to serve the people. I believe people will agree that as long as there is value for money, civil servants should be given a reasonable remuneration.

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

### **Application Procedure for Mainland Scholars to Come to Hong Kong for Academic Exchanges**

4. **MR LAU WONG-FAT** (in Cantonese): *Madam President, it is learnt that at present mainland scholars have to go through some rather complicated and*

*time-consuming procedure applying to the relevant mainland authorities for coming to Hong Kong to conduct academic researches or give lectures, and some of such scholars were granted permission just a few days before their scheduled dates for lecturing, thereby causing much difficulty to the local organizations concerned in making arrangements. In order to facilitate the exchanges and communication between the academic community in Hong Kong and its mainland counterpart, will the Government consider discussing with the Central People's Government with a view to simplifying the relevant application procedure and shortening the processing time?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, mainland scholars intending to come to Hong Kong for academic exchanges, undertaking academic researches or giving lectures may approach the Hong Kong and Macao Affairs Office (HKMAO) of the State Council or the Foreign Affairs Offices (FAOs) located in provinces/cities to apply for a suitable exit endorsement according to established procedures.

If the purpose of entry into Hong Kong is academic exchanges organized by charitable, non-profit-making or religious organizations, the HKMAO or authorized FAOs can issue the necessary short-term exit endorsement for the scholar to come as a visitor. For this category of scholars, the existing arrangements are already very simple and convenient.

If the applicant is to be admitted for undertaking academic researches or giving lectures in Hong Kong, the application will be sent to the Immigration Department (ImmD) through the HKMAO for vetting. The HKMAO will issue the exit endorsement subject to consent by the ImmD. To facilitate entry of this category of mainland scholars into Hong Kong, the ImmD and the relevant mainland authorities have recently discussed and agreed to simplify the procedures. Starting from 1 November 2001, apart from the HKMAO, authorized FAOs can also pass applications for short-term exit endorsement directly to the ImmD or the Immigration Section of our Beijing Office. The ImmD or Beijing Office can complete the vetting within three working days, and inform the subject FAO of the outcome by facsimile. The subject FAO will then proceed to issue a suitable exit endorsement.

The improvements outlined above have significantly shortened the processing time of exit endorsements for mainland scholars. The ImmD will

continue to review operational procedures with the relevant mainland authorities from time to time with a view to rendering better services to the public.

**MR LAU WONG-FAT** (in Cantonese): *Madam President, may I ask whether the Administration has the figures on mainland scholars coming to Hong Kong to conduct academic researches or give lectures in recent years, and whether it has compiled any statistics for comparison with oversea scholars coming to Hong Kong on similar activities?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not have the relevant figures. Since we do not have the relevant figures in respect of scholars coming to Hong Kong from the Mainland or from overseas as visitors for academic exchanges such as attending conferences, seminars or purely meeting local scholars for exchanges during their period of visit without accepting any rewards and not of an appointment nature, it is very difficult to make a comparison. However, as mentioned by me earlier, we have classified mainland scholars into two categories. One category comes to Hong Kong purely to conduct academic exchanges, undertake researches or give lectures. If they come to Hong Kong for a short-term visit, that is, for a stay less than six months, then we have already simplified the application procedure since 1 November. Apart from the HKMAO, the two authorized FAOs in Guangdong and Fujian Provinces can also send the applications direct to the ImmD or the representative of the Immigration Section of our Beijing Office by facsimile. The vetting will be completed within three working days. Therefore, the current application procedures should be faster.

**DR RAYMOND HO** (in Cantonese): *Madam President, many mainland scholars coming to Hong Kong to give lectures or participate in seminars also wish to bring their spouses along. May I ask whether the simplified procedures implemented since 1 November are also applicable to processing applications of the spouses of this type of mainland scholars coming to Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the simplified procedures apply only to the scholars concerned. If the scholars must bring their spouses to Hong Kong, they have to file applications with regard

to the nature of their visits. If the purpose of their spouses coming to Hong Kong is sightseeing, they must apply for a two-way exit permit on the ground of joining a Hong Kong Tour. If they come to Hong Kong to undertake academic researches or give lectures, they must have the exit document issued by the mainland authorities, but their spouses are not included.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, in the third paragraph of the main reply, the Secretary said that the vetting of the exit endorsements of mainland scholars coming to Hong Kong to undertake academic researches or give lectures will be completed within three working days. What are the criteria for vetting? Can they take up paid work after coming to Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, they can take up paid work. Insofar as vetting criteria are concerned, the Director of Immigration has to consider what institution has engaged the scholar to come to Hong Kong. It also has to consider whether the scholar concerned comes to Hong Kong really to undertake academic work, and whether he/she is suitably qualified to come to Hong Kong as a scholar to participate in certain research project, attend meetings or undertake teaching work, and so on. If the visit involves an appointment, we still have to consider the situation before issuing an entry permit even though it is just a brief stay.*

**MRS SELINA CHOW** (in Cantonese): *Madam President, doubtless the undertaking to complete the vetting within three working days is good. May I ask the Secretary how many working days it used to take to vet this type of applications? How many working days are saved after the implementation of this new measure? In addition, has the Government considered shortening the lead time of processing this type of application in the Mainland during the course of study and negotiations? Overall speaking, has the Government set any performance pledge by stating in how many days that the vetting will be completed?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, there are many categories of mainlanders coming to Hong Kong. These include*

employment, training, visits, and so on. The processing time varies according to different types of applications. I do not have such information at hand, but I can look up the relevant records and then answer the Honourable Mrs Selina CHOW in writing. (Annex II)

**MRS SELINA CHOW** (in Cantonese): *Madam President, the Secretary did not answer how many working days it used to take to complete the vetting vis-a-vis those three working days, that is, the three working days within the control of the Government of the Hong Kong Special Administrative Region? How many working days have been saved at least on the part of Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, in order to provide Mrs Selina CHOW with the most accurate answer, I have to check how many working days it took in the past. Insofar as the mainland counterparts are concerned, they certainly have simplified the relevant procedures too. For example, the short-term exit endorsement required for a period of stay in Hong Kong not exceeding six months can also be issued by the HKMAO or the authorized FAOs on their own. As mentioned by me earlier, the relevant procedures in the Mainland have also been simplified. As for the details, I have to look up the records before giving a written reply to Mrs Selina CHOW.

**MR AMBROSE LAU** (in Cantonese): *Madam President, in the third paragraph of the main reply, the Secretary mentioned that the ImmD or the Beijing Office can complete the vetting within three working days. However, she did not mention the case of refusals on such grounds as insufficient information, and so on, after the vetting of the applications had been completed. May I ask the Secretary whether the figures in this respect are available? Are such cases very common?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not have the relevant figures at hand. However, if the application is rejected, the person concerned can certainly appeal and request again to come to Hong Kong. As regards how long it takes before an approval can be granted after appeal, it certainly depends on whether the information provided is complete or not. However, I can cite a figure to give Members an idea of the number of people

coming to Hong Kong for academic researches or give lectures apart from those coming to Hong Kong as ordinary visitors. In recent years, the figures in this respect have increased substantially. In last year, for example, 250 people came to Hong Kong to participate in this type of activities, and the figure was 965 during the period from January to November this year. The rate of increase is close to 300%. (Annex III)

**MR JAMES TIEN** (in Cantonese): *Madam President, I feel that after China's accession to the World Trade Organization (WTO), many mainland scholars may have conducted considerable researches on economic developments, and their studies may even be in greater depth than those conducted by Hong Kong scholars. In the second paragraph of the main reply, the Secretary mentioned that only charitable, non-profit-making or religious organizations can conduct academic exchanges. So, for example, the Hong Kong General Chamber of Commerce is a non-profit-making organization. If it organizes luncheons, sells luncheon tickets and engages a scholar in economics from a certain university to come to Hong Kong to talk on issues relating to the accession to, the WTO, then may I ask the Secretary whether an approval will be granted to the said scholar to come to Hong Kong under such circumstances?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, I believe that the Hong Kong General Chamber of Commerce and other Chambers are also non-profit-making organizations. According to the existing policy, no matter profit-making or non-profit-making organizations, that is, universities or corporations can also invite scholars to come to Hong Kong. But the point is, as I said earlier in my main reply, the difference lies in the procedures only. If the purpose of coming to Hong Kong is to participate in academic exchanges organized by charitable, non-profit-making or religious organizations, the necessary short-term exit endorsement can actually be issued by the HKMAO or the authorized FAOs. In other words, if the exchanges are organized by this type of organizations, the application of the scholar concerned is actually not required to be passed to the ImmD for processing. All it takes is vetting only by the mainland authorities because neither appointment nor reward is involved. If the period of stay is longer and an employment is involved, then the application procedure will be different and it must be passed to the ImmD for vetting. As I have just said, before issuing the permit, the ImmD will consider whether an*

academic institution which has employed a scholar to come to Hong Kong is fit and proper; whether the scholar comes to Hong Kong to undertake academic work; and whether the scholar really possesses the academic qualification, and so on. Therefore, all organizations can actually invite scholars to come to Hong Kong, but the application procedure for scholars invited by religious, charitable, and non-profit-making organizations is much simpler.

**DR LUI MING-WAH** (in Cantonese): *Madam President, we know that many foreign scholars and experts coming to Hong Kong to undertake academic researches or attend seminars also brought their spouses along for sightseeing. In answering Ir Dr the Honourable Raymond HO's supplementary question just now, the Secretary stated that spouses of mainland scholars cannot come with them together. My question is: Should the Hong Kong Government reconsider the relevant policy? If scholars can bring their spouses to Hong Kong, it is conducive to generating income for the local tourism, which can bring a hundred merits but no harm. Would the Secretary reconsider the relevant policy?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, there may be some misunderstanding here. I did not say earlier in my reply that mainland scholars cannot bring along their spouses to Hong Kong. The point is that the documents held by their spouses are not exit permits for official purposes. Since their spouses are not engaged in any academic researches, they must apply for two-way exit permits before they can come to Hong Kong for brief visits of their relatives or participation in a Hong Kong Tour. Therefore, their spouses can come to Hong Kong, only that the application procedures and the documents they hold are different.*

**DR LUI MING-WAH** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. If the spouse wishes to come to Hong Kong on his/her own, he/she can do so at any time. However, if he/she comes to Hong Kong together with the scholar, then it will be a different thing. If he/she comes together with the scholar, the procedures should be simplified because they come together. Therefore, may I ask the Government if consideration will be made to simplifying the procedures applicable to the spouse of a scholar, so that they can apply to come to Hong Kong together?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the exit permit for official purposes is strictly regulated and must undergo strict procedures before it is issued to the approved categories of people who come to Hong Kong for short-term visits, employment, education or training. If the spouse does not belong to these categories, never would the relevant mainland authorities, the HKMAO, FAOs or the Hong Kong authority grant them approvals to come to Hong Kong through this channel. However, as Members may be aware, the lawful channels for spouses to come to Hong Kong from the Mainland are increasing. Mainland passport holders in transit do not need visas if they stay here for less than seven days; and two-way exit permit holders can also join a Hong Kong Tour very conveniently. Therefore, the spouse can absolutely come to Hong Kong through other channels. The lead time for these channels, such as the lead time required for vetting a two-way exit permit, may even be shorter than the time required for vetting documents for academic exchanges.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, both in the second paragraph of the main reply and in answering the supplementary question, the Secretary has mentioned academic exchanges. May I ask if the study of cookery is included? If a master chef comes to Hong Kong to do research and conduct academic exchanges, will this also be included?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Honourable Tommy CHEUNG has raised a very interesting question. I think culinary skills can certainly be exchanged. However, as the term suggests, if this belongs to academic exchanges, a certain academic level must be attained anyhow. Take me as an example. I do not know much about cooking, but I remember that a former colleague of mine, Mrs Anson CHAN, is very good at cooking braised duck with onions. If the master chef in question comes to Hong Kong purely for exchange with a certain lady in Hong Kong his/her skill in cooking braised duck with onions or lemons, I believe that cannot be regarded as academic exchange. However, I know that the Chinese Cuisine Training Institute is an organization which has attained certain academic levels in cookery in Hong Kong. If a scholar comes to this kind of academic organization in Hong Kong for exchanges or giving lectures, and so on, I believe he can come here through this channel.

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

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, I would just like to tell the Secretary that cookery in the Mainland .....*

**PRESIDENT** (in Cantonese): Mr CHEUNG, it is the question time, please raise your follow-up question direct.

**MR TOMMY CHEUNG** (in Cantonese): *I am not arguing, but cookery is considered an academic discipline in the Mainland because it .....*

**PRESIDENT** (in Cantonese): Mr CHEUNG, please be seated first. Members can only raise questions during question time and should not advance arguments. Last supplementary question.

**DR RAYMOND HO** (in Cantonese): *Madam President, if a certain unit in the Mainland wishes to send more than one person to come to Hong Kong to participate in seminars, but it may take a longer time to vet one of the applications, then can the Secretary inform this Council whether the Government will process the applications in a flexible manner by permitting the other people to come to Hong Kong first and then process the application of the said person in order to avoid affecting the schedule of the whole team coming to Hong Kong?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I can make this undertaking to Dr HO because we consider the applications on an individual basis. We will not vet the whole group as a unit simply because the applications are made together. Even if it takes a longer time to vet the application of one of the members, other people will not be affected.

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

## Handling of Falun Gong Issue

5. **MR JAMES TO** (in Cantonese): *Madam President, it was reported that the authorities stepped up efforts last month against the Falun Gong followers in Hong Kong engaged in a peaceful sit-in demonstration outside the Liaison Office of the Central People's Government in the HKSAR (Liaison Office). In addition to seizing the demonstrators' banners and display boards, the police sent officers to make door-to-door inquiries in the building next to the Liaison Office and stop passers-by to ask them if such demonstration activities had caused any nuisance to them and whether they would lodge complaints. In this connection, will the Government inform this Council whether it has assessed if:*

- (a) *it was a waste of efforts and a nuisance to the public for the police to make door-to-door calls and to stop passers-by in handling the matter;*
- (b) *the way in which the police handled the matter was a wilful action to provoke the public's dissatisfaction, hatred and hostility against Falun Gong followers; and*
- (c) *the seizure of the banners and display boards from people engaged in peaceful demonstrations is a violation of the stipulations in the Basic Law and the International Covenant on Civil and Political Rights regarding the protection of freedom of assembly and freedom of speech?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, before responding to the three queries raised by the Honourable James TO, I would like to start by refuting the allegation mentioned in the preamble of this question, that efforts were stepped up last month by the authorities against those who are engaged in a sit-in outside the Liaison Office. As a matter of fact, the Administration never have any policy, nor has any action been taken "against" any person participating in peaceful and orderly public meetings and demonstrations, Falun Gong practitioners included. All along, we respect our people's freedoms of assembly, of procession, of demonstration and of speech, which are clearly guaranteed by the Basic Law.

As regards the three queries by Mr James TO, my response is as follows:

- (a) The management office of the building next to the Liaison Office complained to the police, purportedly on behalf of un-named residents of the building. The substance of the complaint was about the obstruction and nuisance caused by Falun Gong practitioners' demonstrations outside the building. As the management office was not able to provide the details of the complainants, the police had to visit the building with a view to identifying the complainants and ascertaining the veracity of the allegations. The police's action was a legitimate and reasonable effort on the part of a law enforcement agency to establish the accuracy of a report that had been made. It was neither a waste of police effort nor a nuisance. Moreover, the police only contacted the residents of the building, but did not stop any passers-by.
- (b) As already mentioned, the objective of the police's action was to identify the residents who had complained to the management office about the demonstrations. What the police did was no different from the action that would be taken in respect of any such complaint. There are no grounds to say that the police were wilfully provoking the public's dissatisfaction, hatred and hostility.
- (c) Since 25 August 2001, Falun Gong practitioners have been staging a daily sit-in on the pavement outside 162 Connaught Road West. They placed large banners and display boards at the spot. Some were 2.5 m high. The demonstrators occupied an area of 3 m times 9 m and obstructed almost half of the pavement. Before 10 November, the police received three relevant complaints.

According to section 104A of Public Health and Municipal Services Ordinance (Cap. 132), it is an offence to display or affix bills or posters on any government land without the written permission of the Authority concerned. "Bill or poster" includes any sign, placard, board, notice or device. Also, according to section 104C, the Authority concerned may remove those bills and posters.

As complaints were received from the public concerning the nuisance and obstruction caused by the demonstrations, the police

had given advice and 27 warnings to the demonstrators. However, these were ignored by the demonstrators. Therefore, on 10 November 2001, the Food and Environmental Hygiene Department (FEHD) removed the banners and display boards according to the power conferred by sections 104A and 104C. The police were there to maintain public order and ensure public safety. The FEHD invoked the powers conferred on it by the relevant legislation when the actual circumstances so required, in order to protect the rights and freedoms of other members of the public. Therefore, the action did not violate the stipulations in the Basic Law and the International Covenant on Civil and Political Rights (ICCPR) regarding the protection of freedom of assembly and freedom of speech.

**MR JAMES TO** (in Cantonese): *Madam President, actually, members of the public just cannot understand why the police had to deal with complaints against obstruction on pavement with such resolution this time around. At least the people living in Mong Kok will find it hard to appreciate the police's rationale. Was the Government trying to make use of this unusual and proactive action to identify some un-named complainants to demonstrate that it will deal with certain complaints against obstruction with great resolution? May I ask the Secretary whether each and every household in the buildings concerned had been inquired and how many police officers were involved in the action? Could the Secretary also inform this Council whether there have been similar cases before?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the action taken by the police to deal with the complaints against the obstruction caused by Falun Gong practitioners was not exceptionally active or high-profile. On the contrary, the police have all along been particularly tolerant of the Falun Gong practitioners in dealing with the complaints against them. I think the comparison between these Falun Gong practitioners and people staging obstruction in Mong Kok drawn by Mr TO is not at all appropriate. As I said in the main reply, for almost four months since 25 August this year, these Falun Gong practitioners have been occupying the public area somewhere to display their large banners and display boards. Some of these banners and boards were 2.5 m high. They have altogether occupied an area of approximately 3 m times 9 m high, obstructing almost half of the pavement. Given that they have been

occupying a public area for such a long time, the police have received complaints from shops in the vicinity. I have also received complaints from people frequenting the area. These people said they had felt uneasy with the wordings on the banners and display boards and was concerned that the urban outlook would be adversely affected by such banners and display boards. Nevertheless, even under such circumstance, the Government has only issued warnings to these Falun Gong practitioners and requested them to abide by the law. Apart from that, we have also tried only once to remove their banners and display boards by force. These actions were in fact very low-profile and tolerant.

Actually, these Falun Gong practitioners have already affected the rights and interests of others, for the ICCPR has stipulated that such freedom of expression is not absolute. Paragraph 2 of Article 19 says, "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." And Paragraph 3 says, "The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals." According to the complaints received, these demonstrators have already affected the rights and interests of other people. The police have only given them verbal warnings and tried once to help the FEHD to remove the demonstrators' banners and display boards. As a matter of fact, Mr TO, they are enjoying more rights than many other people.

**MR JAMES TO** (in Cantonese): *Madam President, the Secretary has not answered part of my supplementary. She only said that the police had not taken exceptionally active actions, but my supplementary asked of the number of police officers deployed and the time taken.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I am afraid I do not have such information on hand. I believe the police strength employed was very limited. I will check the relevant information before providing Mr TO with a written reply. (Annex IV)

**PRESIDENT** (in Cantonese): Honourable Members, we still have 12 more Members waiting to ask supplementary questions, the sheet of paper I have here is filled with names of Members who wish to raise their supplementary questions. Hence, would Members please keep their supplementary questions as concise as possible, so that more Members can have the chance to raise theirs?

**MISS MARGARET NG** (in Cantonese): *Madam President, I will keep my supplementary as precise as possible. The Secretary mentioned in the main reply that as the management office of the building next to the Liaison Office was unable to provide the details of the complainants, the police had to make door-to-door inquiries. May I ask the Secretary whether this is a normal practice? If any members of the general public should lodge complaints without giving their names, would the police make door-to-door inquiries or would they request the management office to disclose the names of the complainants on the grounds that the police would not entertain any complaints by un-named complainants? Could the Secretary inform this Council whether the police's action was normal?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, this is the police's normal practice. In the event that the police receive a complaint which may involve people breaching the law or committing criminal offences, the police will have a responsibility to establish the complaint case concerned regardless of whether the matter involved is just of a minor nature. If the management office should tell the police that certain shops (in this case some shops have indeed made non-anonymous complaints) or members of the public are dissatisfied with the situation, the police will have a responsibility to conduct inquiries to find out why there is dissatisfaction and the seriousness of the nuisance caused. So, this is the police's normal procedure.

**DR PHILIP WONG** (in Cantonese): *Madam President, every one is equal before the law. May I ask the Secretary why the Government has been exceptionally tolerant of the Falun Gong practitioners?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, Dr the Honourable Philip WONG has made it very clear that we have to treat all demonstrators or demonstrating groups equally before the law. I believe

Members are aware of the police's general practice. The Government will not institute prosecution against demonstrators lightly; rather, our actions are taken in the light of the seriousness of the situation concerned and the nuisance caused, and that is why we have to contact the relevant or affected parties for inquiry purposes. Normally, the police will only issue verbal or written warnings if the nuisance caused is not too serious. Taking the Falun Gong practitioners as an example, the police had explained to them for many times that they did not have to gather there if they wanted to practise Falun Gong. Given the busy traffic and polluted air at the area in question, the practitioners should in fact practise in parks instead. If they wish to stage a petition, there are plenty of places where members of the public can stage petitions; besides, the police can also show them other places as well. They really do not have to forcibly occupy certain public areas to stage a long-term petition. Moreover, so doing is not fair to other demonstrators and petitioners who wish to stage a petition outside the Liaison Office. But then, the Falun Gong practitioners just refused to accept the police's advice. In order to facilitate the peaceful conduct of petitions and demonstrations by the public as far as practicable, and to enable the people to express their views in a peaceful manner, sometimes the police just will not take further actions to prosecute the demonstrators concerned. However, this does not mean that the police will never institute any prosecutions against demonstrators. We will always act according to the law and take actions in the light of how the situation develops and whether serious nuisances will be resulted.

**MS AUDREY EU** (in Cantonese): *Madam President, according to the first paragraph of the Secretary's main reply, "the Administration never have any policy, nor has any action been taken 'against' any person participating in peaceful and orderly public meetings and demonstrations, Falun Gong Practitioners included". While the Secretary mentioned in the past that a close watch would be kept on Falun Gong practitioners, the Chief Executive first remarked that Falun Gong was somewhat heretical and then subsequently referred to Falun Gong as heretical. Even though this paragraph of the Secretary's reply says that the Administration never have any policy against Falun Gong practitioners, the Secretary did mention in the past that a close watch would be kept on Falun Gong practitioners. In this connection, may I ask the Secretary to explain clearly the Administration's policy to deal with Falun Gong practitioners?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I thank Ms Audrey EU for her supplementary question. My comments are not self-contradictory. Certainly, the Government does not have any policy against any persons participating in peaceful and orderly public meetings and demonstrations. It is our duty — as the police have stressed from time to time — to help members of the public participating in peaceful and orderly public meetings and demonstration. Let me cite an incident that took place on a recent Sunday when the East Asia Summit of the World Economic Forum was held. Perhaps Ms EU may also recall that when a group of demonstrators insisted on staging a procession demonstration along Nathan Road and the police advised them to move to Canton Road instead, one of the demonstrators said, to this effect, "How can we stage a procession along Canton Road? It would be like staging a procession at Sha Tau Kok if we should move to Canton Road." I believe the business operators along Canton Road would feel hurt if they should hear that, as Canton Road was considered as remote as the boundary of the territory. In this case, considerable police manpower was deployed to facilitate the demonstration by these persons and a number of vehicles along the road were even halted by the police for the demonstrators. From this we can see that our principle is to provide assistance for members of the public participating in peaceful demonstrations and meetings to enable them to express their views. With regard to the Falun Gong practitioners, as the Chief Executive and I have said before, the doctrines of their faith are indeed absurd in some way. As for our part, we will keep a close watch on any organizations which may pose a threat to the security and order of society or the people's lives, regardless of whether or not they are Falun Gong practitioners. So, the replies I made then and now do not contradict each other.

**MISS CYD HO** (in Cantonese): *Madam President, the residents of Richland Garden had also posted up banners and posters containing discriminatory slogans at the Kowloon Bay Health Centre without the written permission from the Administration. This made the personnel working in the Health Centre and the patients concerned feel uneasy and at the same time damage the reputation of Hong Kong as an open city against discrimination. Nevertheless, at that time the Administration refused to remove those banners and posters containing discriminatory slogans on the grounds that they were private properties. The police did not contact each of the staff members working in the Kowloon Bay Health Centre or the patients there for inquiry and follow-up purposes upon receiving complaints or even after formal reports had been received. With*

*regard to these two incidents, could the Secretary inform this Council in which case the officers have discharged their duties loyally and in which case the officers concerned have abused the powers conferred on them; and whether double standards have been applied?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I am afraid I cannot make any comments or comparison off the cuff because I do not have on hand any information on the Richland Garden case mentioned by the Honourable Cyd HO just now. I will first look into the relevant case and then give Miss HO a written reply. (Annex V)

**MR ALBERT HO** (in Cantonese): *Madam President, just now the Secretary has used the word "tolerant" many times. If the demonstrators concerned had really breached the law, I believe the Secretary would never have tolerated them. But then, the question remains whether they have breached the law. So far the authorities have only received some complaints and confiscated some banners but no prosecutions have ever been instituted. So, we can see that this is not a matter of tolerance but a question of whether or not these people have breached the law. Perhaps they never have breached the law.*

*Earlier, the Secretary said the demonstrators had caused nuisances and that their banners contained provocative wordings, and so on. May I ask the Secretary how did she come to the conclusion that the complaints against the relevant demonstrators were reasonable? Could the Secretary also inform this Council how did the Administration prove that the Falun Gong practitioners had indeed caused nuisances and what unlawful behaviour had arisen from such nuisances?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, any person can lodge complaints. It would be a very subjective case of complaint if any persons should say that they feel uneasy after seeing some slogans or consider the wordings of such slogans a nuisance to them. Also, it would be very difficult for us to say whether the complaints concerned are reasonable or not. As far as objectivity is concerned, we may nevertheless make an objective judgement on the complaints before instituting prosecutions or taking law enforcement actions. For example, we may consider whether the use of certain words will really cause

a large number of residents to feel uneasy. Hence, when the management office of the building next to the Liaison Office complained to the police in October this year that certain un-named residents felt uneasy because of the demonstrators' slogans, the police had to visit the residents of the building to find out whether many people had lodged complaints, felt uneasy or disturbed, the seriousness of the situation, and so on. The police will consider the realistic situation before taking the right enforcement actions.

**MR ALBERT HO** (in Cantonese): *Madam President, my supplementary was asking whether it was because the Secretary suspected the demonstrators of having breached the law that the inquiries in question were conducted.*

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

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the relevant legislation is very clear and straightforward. Recently, for example, a person has been convicted of obstruction and sentenced to a fine of several hundred dollars. The case of obstruction or displaying posters in public areas or on government land is a fact; it is very easy to judge such facts as whether someone has posted any bills or posters in public areas, and so on. Quite a large number of people commit offences against the law every day. As I can recall, last year when the Legislative Council debate the Public Order Ordinance, I pointed out that although the most conservative estimation of the number of persons committing jaywalking might stand at 100 000 at least, the Government would not institute prosecution in each and every case. The Government will look into the seriousness of each individual case and assess the nuisance caused before deciding whether or not prosecution should be instituted. Hence, even though the persons involved in the cases have technically breached the law, the enforcement action to be taken by the Administration will be determined in the light of the realistic situation concerned.

**PRESIDENT** (in Cantonese): Honourable Members, although a number of Members are still waiting for their turn, I can only allow one last supplementary question to be raised as we have already spent more than 18 minutes on this question.

**MR HENRY WU** (in Cantonese): *Madam President, just now the Secretary mentioned tolerance. In my view, however, the demonstrators were not being tolerated but were given preferential treatment. This is because the Secretary mentioned in her main reply that the Government had issued 27 warnings to the demonstrators concerned before taking action. In this connection, may I ask the Secretary whether these 27 warnings would form any precedent? In future when the police or the Government deal with certain peaceful and orderly public meetings, the demonstrators may ask why the police take action against them after giving three warnings while in another case no actions were taken against the demonstrators concerned until after 27 warnings had been served. Could the Secretary inform this Council whether this would pose any obstacle to the law enforcement work by the authorities?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, according to my understanding, whether or not prosecutions will be instituted is dependent on the realistic situation of each individual case, rather than on solely the serving or otherwise of any verbal or written warning to the persons concerned. A certain person who has been warned 30 times before may not necessarily be prosecuted if he or she commits that offence again. This is not the case. Rather, it depends on the situation of each individual case and the seriousness of the problem. We have urged the Falun Gong practitioners to respect the rights and interests of other people and not to occupy certain public areas for a long term. If they wish to peacefully express their views in other places, we will be ready to recommend locations to them.

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

### **Residential Services for Mentally Handicapped Elderly**

6. **MR TAM YIU-CHUNG** (in Cantonese): *Madam President, regarding the provision of residential services to the mentally handicapped, will the Government inform this Council:*

- (a) *of the current total number of mentally handicapped persons and, among them, the respective numbers of persons aged "between 50 and 59" and "60 or above";*

- (b) *whether it plans to provide adequate residential places for the mentally handicapped elderly; and*
- (c) *whether, under the current stipulations, mentally handicapped persons in residential institutions are required to move out upon reaching the age of 60; if so, of the residential arrangements for those who have to move out and whether it will consider abolishing the move-out requirement so as to save them the trouble of having to adapt to a new environment; if it will not abolish the requirement, the reasons for that?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the policy objective of rehabilitation is to provide suitable services, support and assistance to people with disabilities, so that they can develop their potential and participate fully in the community. For mentally handicapped persons, we adopt a holistic approach in the provision of services and support to meet their needs at different stages of their lives. These services include pre-school, special education and integrated programmes, day care, vocational training and supported employment, as well as residential services.

- (a) Following a household survey conducted by the Census and Statistics Department on people with disabilities in 2000, it is estimated that the number of mentally handicapped persons in Hong Kong is between 62 000 and 87 000. However, this data does not contain an age profile.

Sixty of the 4 486 mentally handicapped persons currently living in government-run or subvented hostels and homes are over 60 years of age. As regards those aged 50 to 59, they currently number 298.

- (b) Over the next five years, we will increase the number of residential places for all mentally handicapped persons to over 6 200, representing an increase of over 29% from today. We envisage that with this planned increase in residential places, the residential needs of elderly mentally handicapped persons will be met.

However, not all elderly mentally handicapped persons require formal residential care. Accordingly, we will continue to enhance our services in terms of day care services. A recent example is our strengthening of the home-based training programme. The programme includes training in self-care skills and domestic skills and the provision of direct maintenance or support services. Apart from improving the staffing provision in the five existing teams, we will provide 13 additional teams to serve mentally handicapped persons throughout the 18 districts. The full-year recurrent cost of this enhanced home-based training service is \$60 million.

- (c) Mentally handicapped persons are not required to leave their Home or Hostel upon reaching the age of 60. However, if their functional ability changes and thus requiring a different level of care, they may be transferred to another more suitable facility. This will enable the individual to receive additional support and care. According to the Social Welfare Department (SWD), no mentally handicapped person over the age of 60 has been moved this year.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, in part (c) of the main reply the Secretary pointed out that for mentally handicapped persons reaching the age of 60, if their functional ability changes and thus requiring a different level of care, they may be transferred to another more suitable facility. Will the Secretary elaborate on "more suitable facility"? It is because the ordinary homes for the aged cannot look after this kind of the mentally handicapped.*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, mentally handicapped persons can be referred to two types of residential homes. The first is care homes for severely mentally handicapped persons. These homes can look after elderly mentally handicapped persons in need of more intensive care. The second is residential homes for the elderly where elderly people with mental disabilities will also be accepted.

**MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, symptoms of dementia generally develop in mentally handicapped persons aged over 40.*

*Can the Secretary tell us the definition of elderly mentally handicapped persons? Are they defined in the same way as normal persons are, that is, they are considered elderly upon reaching the age of 65, or are they already taken as elderly at the age of 40? If the latter is the case, can the Government meet the needs of the elderly mentally handicapped persons by increasing the number of residential places by 29%?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I will answer this supplementary question in three parts. First, there is no information showing that mentally handicapped persons would suffer from dementia at the age of 49. Second, I do not know how the term "elderly" should be defined. When it comes to an age-based definition, in the past it referred to people having reached the age of 60, and later 65; and now the line is drawn at 75 or 85. The longer the human life expectancy, the older the age of a person defined as elderly. We can all see that some people aged 75 still have very good health. So, the definition of the elderly is actually made for social service purposes. Third, we consider that the residential places for the mentally handicapped are adequate, for only 275 mentally handicapped persons aged over 50 are on the waiting list for residential places.

**MR JASPER TSANG** (in Cantonese): *Madam President, with regard to the Secretary's main reply and his reply to the question asked by the Honourable YEUNG Yiu-chung just now, I would like to ask the Secretary this: Does he consider it wrong to say that changes in age have a more significant effect on the functional ability of the mentally handicapped than on normal people? That is, does the Government consider that there is no proof whatsoever showing that mentally handicapped persons are more prone to senility or to losing the proper functioning of limbs? If not, why did the Government not look into the distribution of mentally handicapped persons by age in the main reply? Can the Government really provide mentally handicapped persons of all ages with the services they require?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I wish to clarify one point. I said in my reply just now that there was no information and proof showing that mentally handicapped persons would suffer from dementia at an earlier age. Secondly, on the issue of mental

retardation, the causes are indeed many. Some are born mentally handicapped; some have other physical disabilities apart from mental retardation, and this type of mentally handicapped persons has a shorter life expectancy. But with the provision of better care now, more and more mentally handicapped persons can live longer; and very often, they may outlive their family members and are left to nobody's care when they are old. In the past, many mentally handicapped persons did not live long, for they might have other disabilities and so, their life expectancy was shorter. But if they are merely mentally handicapped and do not have other disabilities, their life expectancy will not be particularly short. Certainly, it will depend on whether or not society can provide better care for them. If society can provide them with better care, there is no reason why the mentally handicapped should live a particularly short life. There are many different types of mentally handicapped persons, and we cannot lump them all together in one single category for handling.

**MISS CYD HO** (in Cantonese): *Madam President, in part (c) of his main reply the Secretary pointed out that according to information, no mentally handicapped person over the age of 60 has been moved this year. There may be many reasons behind this. First, their Homes or Hostels do not require them to move out. Second, perhaps there are no changes in their functional ability when they reach the age of 60 and they are therefore allowed to stay. Third, their functional ability has changed and they have reached the age, but they cannot move out because there are no residential places available. Can the Secretary tell us if the third situation exists? What are the underlying reasons for nobody having to move out of their Homes or Hostels this year? Moreover, how many people are waiting for a place in the care homes for severely mentally handicapped persons, as mentioned by the Secretary earlier?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as I said earlier, there are 275 mentally handicapped persons aged over 50 on the waiting list for residential places. Some of these cases or the services they require may overlap. The SWD is currently examining this waiting list to see how these cases should be handled. Some mentally handicapped persons who are already living in residential homes but need to be transferred to other homes where care services are provided will also be included in the list. We will generally accord priority to severely mentally handicapped

persons in need of other types of care. I do not have on hand information about cases of mentally handicapped persons not being transferred due to a lack of residential places. But in the long term, we hope that these mentally handicapped persons will not have to be transferred. In providing services for the elderly, our objective is to achieve continuum of care, and we hope to apply this concept to the mentally handicapped. Of course, it may not be suitable now given the current availability of residential places. Unless there is a need for transfer, mentally handicapped persons should not be transferred to other residential homes frequently in the long term. They should continue to stay in the Home or Hostel where they have been living and spend their old age there.

**PRESIDENT** (in Cantonese): Miss HO, has your supplementary question not been answered?

**MISS CYD HO** (in Cantonese): *No, it has not, Madam President. The Secretary said just now that he does not have the information on hand. Can he provide it in writing later?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I will try my best to collect the information. If there is such information, I will give the Member a written reply. (Annex VI)

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, in replying to Miss Cyd HO's question earlier, the Secretary answered part of the supplementary question that I would like to ask. In part (a) of the main reply, the Secretary mentioned that among mentally handicapped persons living in Hostels and Homes, those aged 50 to 59 had apparently increased in number. It is pointed out in part (c) that if there are grave changes in the functional ability of mentally handicapped persons, they may have to be transferred. The Secretary stated earlier that under the relevant policy, transfer is the last option and mentally handicapped persons should be provided with continued care. But there is a sign that we can see very clearly, and this was also mentioned by the Secretary in his reply to Mr Jasper TSANG's supplementary question. That is, mentally handicapped persons can now live longer and longer. Given increasingly more*

*mentally handicapped persons will have a longer life, these Homes or Hostels will have to accommodate more and more mentally handicapped persons of an older age and therefore, the care services for them will have to be enhanced. In view of this trend, and as the Government's policy direction is to achieve continuum of care, will the authorities look into how this policy objective can be achieved in the context of support measures and services, so that the increasing number of elderly mentally handicapped persons can benefit from continuum of care?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, as suggested by Mr LAW, we will certainly look into the facilities and services at residential homes to examine if they can achieve the objective of continuum of care for the mentally handicapped. We must work hard in this regard to achieve this policy objective in the future. My answer is simple. Yes, we will look into this.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, in part (b) of his main reply the Secretary said that the Government will increase the number of residential places for mentally handicapped persons to over 6 200 over the next five years. To this end, is the Government going to expand the existing Homes or Hostels or build new Homes and Hostels in new districts? Has any preliminary planning been made with regard to these districts?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I do not have the detailed information up my sleeve. I will give a written reply to the Honourable Member. However, most of these places will be new places, whereas some will be additional places in the existing Homes or Hostels. As for the exact numbers, I will give the Member a written reply. (Annex VII)

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary said in part (b) of his main reply that the number of residential places would be increased by 29%. I would like to know what other resources are deployed accordingly to provide support, especially in terms of human resources with regard to professional personnel?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, we will make suitable arrangements. These Homes or Hostels generally do not have a large number of professional personnel, but care homes for the severely mentally handicapped will have more professionals. We will train up suitable professionals.

**PRESIDENT** (in Cantonese): Last supplementary.

**MR ABRAHAM SHEK:** *Madam President, are the government resources currently allocated for taking care of the mentally handicapped being adequate? If yes, why are there still 250 people waiting for residential accommodation? If not, what is the Government going to do; and do the people concerned have to wait in the next five years?*

**SECRETARY FOR HEALTH AND WELFARE:** Madam President, as in my main reply, I said that we are proposing to increase the number of residential places by 29%. That is because there is a waiting list, and there is a demand for these residential places. In parallel with the provision of these residential places, we are also increasing some of the day places, because there is also a need for the provision of day activities when the mentally handicapped are given opportunities to be trained and to participate in active social life. In fact, the number of places in these activity centres is generally quite sufficient to meet the demand. But we also project that there will be future needs, so we are also increasing the places of day activity centres. In my main reply, I have also mentioned that we are increasing the numbers of home-training teams and home-help teams, because many of the mentally handicapped really should be better-off at home. In case family members are unable to take care of them, or do not have the skills to take care of them, these home-training teams will be able to train and help those members to take care of the mentally handicapped, so that the latter can remain at home. We also provide home care and home support. So, in the future, our policy is to encourage the mentally handicapped to remain in the community rather than in residential settings. It is only when there is a social need, for instance, when they grow older or they outlive their family members, and when these elderly mentally handicapped individuals do not have self-care ability, then they would need residential care. But as far as possible, we will continue to enhance the community services and increase places in day

activity centres. And I think the community, rather than residential settings, is the best place for the mentally handicapped.

**PRESIDENT** (in Cantonese): Oral question time ends here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Employment Agencies Overcharging Job Seekers**

7. **MR CHAN KWOK-KEUNG** (in Chinese): *Madam President, regarding employment agencies overcharging job seekers, will the Government inform this Council of:*

- (a) *the respective numbers of complaints received by the Labour Department (LD) last year and so far this year about employment agencies overcharging job seekers, together with a breakdown by the type of trades of the jobs which were offered to such persons;*
- (b) *the total and average amount of fees involved in those complaint cases received by the LD since the beginning of this year, the highest fees charged, and a breakdown (by bands of 10%) of the complaints by the fee as a percentage to the job seeker's wages in the first month of employment; and*
- (c) *the new tricks used by employment agencies for overcharging which have come to the notice of the LD?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President,

- (a) In 2000, the LD received 53 complaints against employment agencies for overcharging of placement fee. Forty-six of them involved finding employment for foreign domestic helpers. From January to October this year, the LD received 100 complaints of the same nature. Seventy-six of them involved finding employment for foreign domestic helpers. The LD does not have further

breakdown by the type of trades of the jobs on the remaining complaints. The majority of the complainants was unable to provide detailed information or documentary proof of the offence under complaint. Moreover, the complaints were very often lodged long after the incidents, and the details reported might even be contradictory. Thus, the LD has tremendous difficulties in following up the complaints.

- (b) For the complaints received this year, the largest amount involved in a single case is \$50,000. In this case, the complainant alleged that a sum of \$50,000 had been paid to an ex-employee of an employment agency as placement fees for finding employment in Hong Kong for her six relatives. The complainant did not pay the money to the employment agency and did not have any receipt. She also could not assist in locating the person under complaint. Furthermore, the case had already been time-barred for prosecution when the complaint was lodged at the LD. Therefore, no legal action could be taken. Since some of the complainants fail to specify the mode or even the amount of payment, the LD does not keep detailed statistics on the amount of money involved and related analyses. The amount of placement fee overcharged in each case ranges from \$800 to over \$10,000 this year.
- (c) This year, the LD has not discovered any new abusive measures of employment agencies in overcharging job seekers. However, this is the first time we come across a case that an ex-employee of an employment agency deceived a large sum of money amounting to \$50,000.

### **Inter-network Short Message Services Provided by Mobile Phone Network Operators**

8. **MR ERIC LI** (in Chinese): *Madam President, in reply to my question raised on 23 May this year, the Secretary for Information Technology and Broadcasting advised that through co-ordination of the Office of the Telecommunications Authority (OFTA), six mobile phone network operators (operators) were establishing a new system for the provision of inter-network Short Message Services (SMS), and that the system was expected to be completed in July this year. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the operators' failure to provide inter-network SMS so far;*
- (b) *of the Asian countries and territories in which operators have launched such service as at the end of last month;*
- (c) *whether the expenses for solving the relevant technical networking problems are borne by the Government or shared among the operators;*
- (d) *of the impact of the expenses for establishing the system on mobile phone service charges; and*
- (e) *of the reasons for the relevant authority not having adopted measures to enable operators to provide such service at the initial stage when the mobile phone networks were established?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Chinese): Madam President,

- (a) The inter-network SMS was already launched officially on 3 December this year. As I replied to the Legislative Council's question on 23 May this year, this new service is the initiative by the six mobile services operators. Through the co-ordination of the OFTA, the six mobile services operators had been proactively establishing, installing and testing a new system supporting the inter-network SMS. According to the operators, the progress was satisfactory and that the work could be completed by July 2001. Subsequently, due to the complexity of the central system and the requirement to interconnect various networks, the time spent on developing and establishing the system was longer than expected. Throughout the process, the six operators had to tackle the connection problems of different networks and equipment. Besides, they had to adjust the central system software to adapt to the local requirements. To ensure that the central system was adequately tested so as to provide the public with the best service, the operators carried out additional tests in a more meticulous manner. We are pleased to see that they have completed their tests with satisfactory results and launched the inter-network SMS on 3 December.

- (b) As far as we understand, as at last month, some Asian countries such as Singapore and the Philippines already provided inter-network SMS of similar nature. As our mobile networks generally outnumber other areas and we offer number portability service, it takes longer for Hong Kong to design, test and co-ordinate the inter-network SMS system.
- (c) The OFTA is responsible for co-ordinating the six operators and their contractors and offering help to resolve difficulties. The expenses incurred in examining, developing, installing and connecting the inter-network SMS and solving technical problems on networking are borne solely by the operators themselves. The Government has not spent any public money to subsidize them.
- (d) The charges for the mobile phone service are determined by the operators who make their own commercial decisions. We believe that the operators have taken into account all relevant factors such as the costs of various value-added services and the market situation in determining such charges.
- (e) SMS was introduced in Hong Kong in 1995-96 in the initial stage. With the recent development in information technology and rapid increase in mobile services users, demand for SMS services and inter-network SMS grew. The OFTA has therefore started to discuss with the six operators in 2000 on the introduction of the inter-network SMS. Eventually, the service was launched by the six operators on 3 December in line with market development.

### **Operation of Waste Management Facilities**

9. **MR LEE CHEUK-YAN** (in Chinese): *Madam President, at present, the design, construction and operation of the three landfills and eight refuse transfer stations (RTSs) are undertaken by private contractors. In this connection, will the Government inform this Council of:*

- (a) *the name of the contractor in respect of each of the landfills and RTSs, as well as the prescribed and the remaining duration of the respective operation contracts;*

- (b) *the respective fees charged by each contractor for designing and constructing the relevant facilities, as well as the basis for calculating their waste treatment charges to be collected from the Government, and whether the operation contracts have specified the minimum amounts of waste to be treated and the minimum waste treatment charges payable by the Government; if so, of the specific details; and*
- (c) *the amount of waste treated, the total amount of waste treatment charges collected from the Government and the average waste treatment cost per tonne last year in respect of each contractor?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Chinese):  
Madam President,

- (a) Information on the contractors of landfills and RTSs is as follows:

- Names of the contractors:

	<i>Contractors</i>
North East New Territories Landfill	Far East Landfill Technologies Limited
South East New Territories Landfill	Green Valley Landfill Limited
West New Territories Landfill	} Swire SITA Waste Services Limited
Kowloon Bay RTS	
Sha Tin RTS	
Island West RTS	
Outlying Islands Transfer Facilities	
North West New Territories RTS	

*Contractors*

West Kowloon RTS	South China Transfer Limited
North Lantau RTS	Ecoserve Limited
Island East RTS	Island East Transfer Station Company Limited

- The contracts for the three landfills have not specified any operation periods, as these are highly dependent on the waste throughput and the landfilling techniques adopted. Based on the current waste throughput, the Environmental Protection Department (EPD) estimates that the operation periods and remaining operation periods of the three landfills are:

	<i>Estimated operation periods</i>	<i>Remaining operation periods</i>
West New Territories Landfill	25 years	12 to 16 years
North East New Territories Landfill	15 years	12 to 14 years
South East New Territories Landfill	13 years	9 to 10 years

- All contracts for RTSs have specified an operation period of 15 years. The remaining periods of these facilities are:

*Remaining Periods*

Kowloon Bay RTS	3 years
Sha Tin RTS	8 years
Island West RTS	11 years
Outlying Islands Transfer Facilities	12 years
North West New Territories RTS	15 years
West Kowloon RTS	11 years
North Lantau RTS	12 years
Island East RTS	6 years

- (b) The total design and construction costs of landfills and RTSs are:

	<i>Total design and construction cost (\$ million)</i>
West New Territories Landfill	1,916
North East New Territories Landfill	1,841
South East New Territories Landfill	2,331
Kowloon Bay RTS	215
Sha Tin RTS	201
Island West RTS	637
Outlying Islands Transfer Facilities	303
North West New Territories RTS	216
West Kowloon RTS	760
North Lantau RTS	238
Island East RTS	413

The waste treatment fees payable to the contractors of landfills and RTSs are based on the tender prices. Based on the operation mode of the facilities, as well as the planned developments and expected waste throughput of the service regions, the EPD has specified the minimum amounts of waste to be treated and the minimum waste treatment fees when it awarded the operation contracts. Details are as follows:

	<i>Monthly minimum amount of waste to be treated (tonnes)</i>	<i>Monthly minimum waste treatment fees (\$ million)</i>
West New Territories Landfill	35 000	6.3
North East New Territories Landfill	55 000	7.5
South East New Territories Landfill	60 000	9.5
Kowloon Bay RTS	1 000	4.0
Sha Tin RTS	9 000	2.5
Island West RTS	15 000	4.1
Outlying Islands Transfer Facilities	6 400	3.2
North West New Territories RTS	7 000	1.2
West Kowloon RTS	39 000	5.5
North Lantau RTS	3 000	1.8
Island East RTS	28 000	6.6

- (c) In 2000-01, the amounts of waste treated by the contractors of various facilities, the waste treatment fees paid to them and the average waste treatment cost per tonne are:

	<i>Annual amount of waste treated (million tonnes)</i>	<i>Annual waste treatment fees (\$ million)</i>	<i>Average waste treatment cost per tonne (\$)</i>
West New Territories Landfill	2.200	126.6	58
North East New Territories Landfill	1.300	110.5	85
South East New Territories Landfill	3.000	184.7	62
Kowloon Bay RTS	0.390	76.8	197
Sha Tin RTS	0.350	34.9	100
Island West RTS	0.170	50.5	297
Outlying Islands Transfer Facilities	0.042	39.3	936
West Kowloon RTS	0.560	69.0	123
North Lantau RTS	0.040	22.4	560
Island East RTS	0.320	82.4	258

In addition, as the North West New Territories RTS was only commissioned in September 2001, the relevant information is not available yet.

**Suspensions of Airport Express Train Service**

10. **MR HOWARD YOUNG:** *Madam President, on 6 November, the Airport Express train service was suspended for more than three hours due to power failure, adversely affecting a large number of passengers including some overseas visitors who had departing flights to catch. In this connection, will the Government inform this Council whether it knows:*

- (a) the number of suspension of the Airport Express service since it came into operation in 1998, and the number of passengers affected on each occasion;*
- (b) as a result of the various suspensions of the Airport Express service, the number of passengers who missed their departing flights and, among them, the number of overseas visitors, and the number of departing aircrafts delayed; and*
- (c) the remedial measures the MTR Corporation Limited (MTRCL) has in place to avoid the recurrence of similar incidents and minimize the inconvenience caused to passengers?*

**SECRETARY FOR TRANSPORT:** Madam President, according to the MTRCL, there have been eight incidents resulting in temporary suspension of the Airport Express since its commissioning in July 1998.

The MTRCL has a comprehensive contingency plan to handle a service interruption of the Airport Express. Free shuttle buses are provided to take passengers to and from the airport. The service target of the MTRCL is to make the free shuttle buses available at affected Airport Express stations within 20 minutes of the service disruption. The MTRCL will also contact the Airport Authority, the Transport Department and other transport operators immediately to organize alternative transport arrangements.

Whilst Airport Express passengers were inconvenienced during the eight incidents mentioned above, emergency shuttle buses organized by the MTRCL were sufficient to cater for the needs of the affected passengers. The MTRCL

has not received any reports of aircrafts being delayed as a result of service disruption of the Airport Express. The Airport Express has carried over 33 million passengers since July 1998. So far, 18 passengers have complained to the MTRCL for having missed their flights as a result of the service disruption of the Airport Express during the same period.

The service reliability of the Airport Express has been maintained at very high standards. Extensive maintenance and detailed operational plans are in place to ensure that the Airport Express will continue to be operated at high standards. For every single incident resulting in suspension of service, the MTRCL conducts detailed investigations and put in place necessary remedial measures to avoid recurrence of incidents of a similar nature, for example, revision of operating procedure, improvement of maintenance procedure and upgrading the durability of train components.

### **Plan to Build a Universal Studios Theme Park in Shanghai**

11. **DR DAVID CHU** (in Chinese): *Madam President, it has been reported that the management of the Universal Studios of the United States recently reached a preliminary agreement with the Shanghai Municipal Government on developing a Universal Studios theme park in Shanghai. In this connection, will the Government inform this Council:*

- (a) *as the Chief Executive indicated on 4 November 1999 that the Universal Studios were interested in setting up a theme park in Hong Kong, whether it has made efforts over the past two years to bid for setting up a Universal Studios theme park in Hong Kong; if so, of the details of such efforts;*
- (b) *whether it knows the reasons for the Universal Studios choosing Shanghai instead of Hong Kong as the place for setting up a theme park; and*
- (c) *whether it has assessed the impacts of the setting up of the theme park in Shanghai on Hong Kong's tourism?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President,

- (a) Our first priority is to get Hong Kong Disneyland up and running and make it a success. In the longer run, given our objective to diversify the range of tourism attractions in Hong Kong, we will be happy to consider proposals from the private sector on their merits.
- (b) As regards the commercial plans and considerations of Universal Studios or any other company, we do not normally comment on the business decision or affairs of individual companies because we respect commercial confidentiality as a matter of principle.
- (c) The attractiveness of Hong Kong as a tourist destination lies in our unique blend of East and West and the mix of cosmopolitan, heritage and natural attractions, rather than being dependent on any single attraction. The wide range of tourism development projects that we have in hand will further strengthen our position as Asia's world city and most popular destination city.

**Assistance to Members of Construction Industry in Complying with Environmental Protection Legislation**

12. **MR ABRAHAM SHEK:** *Madam President, will the Government inform this Council whether:*

- (a) *there has been a downward trend in the number of environmental offences committed by members of the construction industry over the past three years; and*
- (b) *instead of placing emphasis on the enforcement of environmental protection legislation, it will give advice and assistance to members of the construction industry in overcoming the technical and management problems that have been hindering them from complying with such legislation; if it will, of the details?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD:** Madam President,

- (a) The total number of convictions related to construction activities under four environmental ordinances, namely the Air Pollution Control Ordinance, the Noise Control Ordinance, the Waste Disposal Ordinance and the Water Pollution Control Ordinance had been on an upward trend over the past three years. It increased from 431 in 1998 to 649 and 718 in 1999 and 2000 respectively.
- (b) The Administration attaches great importance to working in partnership with the construction industry to promote awareness of statutory requirements and technical and management practices that will enable members of the industry to comply with the requirements. During the past three years, the Environmental Protection Department (EPD) organized 44 seminars and workshops that were attended by about 3 700 members of the industry. It also participated in seminars conducted by organizations representing the industry. In addition, the EPD assisted the Hong Kong Construction Association in drawing up "Reference Guide on Environmental Legislation Relevant to the Construction Industry in Hong Kong" which was published in 1999. In May 2001, the EPD provided the Construction Industry Training Authority with teaching materials on environmental legislation for the Authority's use in training construction workers. It is currently exploring a number of initiatives with the Hong Kong Construction Association to promote further the environmental awareness of contractors and construction workers, and to enhance communication between the EPD and members of the industry so that potential problems related to compliance with statutory requirements could be discussed and addressed at an early stage as far as practicable.

### **Sudden Closure of Private Schools**

13. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, concerning the sudden closure of private schools, will the Government inform this Council of:*

- (a) *the avenues through which parents of the students of the Canadian Overseas International College (COIC), which closed down suddenly in October this year, can recover the tuition paid in advance; and whether it has investigated if financial difficulties were the genuine cause of the closure of the College; and*
- (b) *the measures it will take to avoid the recurrence of private schools closing down in the middle of an academic year because of financial difficulties, for instance, whether it will require the sponsoring bodies of the schools concerned to provide reliable financial guarantees such as bank guarantees, so as to protect the interests of students?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President,

- (a) To assist parents of students of former COIC to recover prepaid tuition fees, the Education Department (ED), upon receipt of the notification of the closure of the school, wrote to the supervisor of COIC immediately requesting refund of school fees. In addition, referral forms to the Consumer Council were distributed to parents concerned so that the Consumer Council could help them recover prepaid tuition fees. (The ED passed 247 completed referral forms earlier to the Consumer Council for follow-up). If necessary, the Consumer Council would assist parents to recover prepaid tuition fees through the Small Claims Tribunal.

The police is investigating the case of the closure of COIC. The police will, among other things, examine whether the closure of the school was due to financial difficulties.

- (b) Under the Education Regulations, schools (including private schools) are required to collect school fees by monthly instalments. This requirement considerably reduces the possible loss of tuition fees paid. We are now reviewing whether existing measures are sufficient to protect the interests of parents and students. The suggestion of bank guarantees will be considered in the review.

**Land Development Projects Affecting Residents' Access**

14. **MR ALBERT CHAN** (in Chinese): *Madam President, it is learned that in carrying out property developments in rural areas in the New Territories, some private developers closed the pedestrian links on their land. These links have been used by the residents nearby for many years, and the closure has denied them access to their homes. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints received over the past three years concerning land development projects affecting residents' access and the outcome of each complaint handled;*
- (b) *whether, in vetting and approving land development projects in rural areas in the New Territories, it has considered the issue of access for the residents nearby as well as the impact of such development projects on their daily life; and*
- (c) *of the criteria adopted for vetting and approving land development projects in rural areas in the New Territories?*

**SECRETARY FOR PLANNING AND LANDS** (in Chinese): Madam President,

- (a) Over the past three years, we received five complaints on development projects affecting local residents' access. The relevant District Lands Offices mediated between the developers or the lease holders concerned and the affected residents in resolving the problems. With the District Lands Offices' involvement, all the complaints were resolved with the provision of pedestrian links or alternative access arrangements for the affected residents.
- (b) The District Lands Offices are conscious of the need to ensure that land development proposals will not bring about adverse effects to the local residents. If the existing access is likely to be affected by the development plan, the developer or the lease holder will be asked to make alternative access arrangements. In the New

Territories rural areas, before any land grant for development is approved, notices are posted in the villages concerned advising local residents of the development proposal. Copies of these notices are also forwarded to the relevant Village Representatives and Rural Committees. Through these arrangements, local residents are informed of the development proposals and are given the opportunity to raise comments and objections. The District Lands Offices will take these comments or objections into account when processing the development proposals, and will ask the developers or the lease holders to consider appropriate measures to address the concerns of the local residents.

- (c) Like other development proposals, developments in the New Territories are required to comply with the relevant planning, building and lease requirements.

### **Labelling System for Genetically Modified Food**

15. **MISS CYD HO** (in Chinese): *Madam President, in late February this year, the Environment and Food Bureau (EFB) conducted a three-month public consultation exercise on "Labelling of Genetically Modified (GM) Food". Also, in its Policy Objectives published in October this year, the EFB indicated that it was still "taking into account the views received" and had yet to finalize its approach in this respect. Regarding the introduction of a labelling system for GM food in Hong Kong, will the Government inform this Council:*

- (a) *whether the outcome of the consultation has indicated that the majority of the public are in support of the introduction of a mandatory labelling system, and the adoption of 1% as the GM content threshold above which a food product is required to be labelled;*
- (b) *of the reasons why the authority has not yet finalized its approach in this respect, more than six months after the close of the consultation period;*
- (c) *of the criteria adopted for evaluating public views and the weighting of each criterion;*

- (d) *of the ranks of the government officials responsible for evaluating and analysing the public's views, the number of meetings they have held, the details of other relevant work and the conclusions drawn so far;*
- (e) *whether a mandatory labelling system will be implemented; if so, of the implementation timetable; if not, the reasons for that; and*
- (f) *given that the State Council has promulgated on 23 May this year the Regulations on Administration of Agricultural Genetically Modified Organism Safety, which state that "the State introduces a labelling system for agricultural genetically modified organisms" and "imported agricultural genetically modified organisms which are not labelled as stipulated are allowed entry only after they have been labelled", whether the Administration has assessed the effects of the Regulations on the export and import of Hong Kong, and whether, in deciding on the implementation of a labelling system in Hong Kong, the fact that a mandatory labelling system has already been implemented in the Mainland will be an important factor for consideration?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Chinese):

Madam President,

- (a) During the consultation period, we have received 6 359 sets of views from members of the public, the trade, green groups and professional bodies. Of these, 5 747 are views from members of the public using standard format email, postcards or signature forms provided by a green group.

The consultation paper proposed three options for the way forward in introducing a GM food labelling system. These are voluntary labelling, mandatory labelling and having voluntary labelling first, to be followed by mandatory labelling. The majority of the views received, including 5 747 sets in the aforementioned standard format and 502 sets from other members of the public and organizations, supported mandatory labelling. There were 41 sets of views, including those from several trade associations

representing over 500 member companies, in support of voluntary labelling. Another 54 sets of views, including those from several trade associations representing over 3 700 member-companies, were in support of having voluntary labelling first, to be followed by mandatory labelling. There were also a few sets of views that supported labelling of GM food with significantly different characteristics only, or were totally against any form of GM food labelling.

Regarding the threshold, only 575 sets of views have specific comments. Of these, 424 sets using the aforementioned standard format and 63 sets from other members of the public and various organizations supported a threshold of 1% or lower.

(b) and (e)

The trade has indicated to the Government that a mandatory labelling system for GM food would have serious impact on the trade and consumers alike. The trade has pointed out that under a mandatory GM food labelling system, they would need to obtain documentation from the suppliers or producers of raw materials to certify whether the raw materials have been genetically modified. They would also have to conduct tests on the raw materials and products. These would result in a substantial increase in the cost of food. The trade has also expressed the view that Hong Kong was a very small market for overseas food manufacturers. If the GM food labelling system in Hong Kong is very different from those implemented in other markets, overseas manufacturers would probably give up the Hong Kong market. The trade is worried that there would be an increase in food prices and a reduction in the variety of food products available for the community.

As food is a basic necessity, we have to consider the trade's views on the potential impact a mandatory GM food labelling system may have on food prices and supply. We will therefore conduct a detailed economic assessment on the impact of a GM food labelling system on the food trade and on food prices before deciding on the way forward. We have already started the work.

(c) and (d)

The EFB officials of all levels have been involved in the analysis and consideration of the views received. The objective of the consultation exercise was to gather views of the public, the food trade, organizations concerned and our trading partners on GM food labelling. We hoped to obtain more detailed information on the public's preference and the impact of a GM food labelling system on the food trade and on the public for consideration when deciding on the way forward. We have not set fixed weightings of the various criteria.

(f) According to our understanding, the mainland "Regulations on Administration of Agricultural Genetically Modified Organism Safety" (the Regulations) regulate mainly the research, testing, production and import and export of agricultural GM organisms. As far as we know, the Mainland does not have a specific mandatory GM food labelling system. We understand that the Ministry of Health is drafting a regulatory regime on GM food. Since Hong Kong does not produce GM food, our assessment is that there will not be any substantial impact on us.

We will maintain contact with the relevant authorities in the Mainland to obtain information on the progress in the drafting of the GM food regulatory regime and the details of the said regime. We will also closely monitor developments in the international scene.

### **Effectiveness of Collection Bins for Separate Collection of Recyclable Waste**

16. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, since October last year, the Food and Environmental Hygiene Department (FEHD) has placed collection bins for separate collection of recyclable waste at various public places. In this connection, will the Government inform this Council of:*

- (a) *the daily average quantity of each category of waste collected by such collection bins;*
- (b) *the respective procedures for processing each category of waste;*  
*and*

- (c) *the specific measures in place to ensure that the separated waste will indeed be recycled; if there are no such measures, how it assesses the effectiveness of such collection bins in protecting the environment?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Chinese):  
Madam President,

- (a) Between October 2000 and October 2001, the daily average quantities of recyclable materials collected from waste separation bins at a number of public locations are as follows:
- waste paper : 169.5 kg
  - aluminum cans : 11.3 kg
  - plastic bottles : 35.2 kg
- (b) The contractors that collect recyclable materials provide collection service in accordance with their contracts with the FEHD. These contracts have set out the detailed work plans, including the frequency, time and route of collection. The FEHD can also request contractors to provide additional collection service for waste separation bins with higher usage rates.

The contractors are obliged to keep detailed records showing the date of each collection as well as the amount of each category of materials collected, and to report the same to the FEHD within 48 hours after delivery to recyclers. The contractors are also required to keep detailed records showing the service performed in each district and submit them to the FEHD on a weekly basis.

- (c) The FEHD operates a two-pronged monitoring system to ensure that the recovered materials are delivered to recyclers. The contracts require the contractors to deliver the recovered materials to recyclers and forbid them to dump these materials in landfills, refuse transfer stations or other waste disposal facilities. The contractors are also required to produce to the FEHD documentary

proof that the recovered materials have been properly handled (for example, exported or sold locally).

FEHD staff conduct checks on the performance of the contractors during their routine patrol. In addition, FEHD staff conduct surprise inspections to check the actual delivery to recyclers after collecting recovered materials.

In the event of non-compliance with the terms of the contracts, the FEHD is entitled to terminate the contracts and claim the contractors for damages arising from the termination of the contracts.

### **Development of Land in Frontier Closed Area**

17. **DR RAYMOND HO** (in Chinese): *Madam President, regarding the development of the land inside and adjacent to the Frontier Closed Area (FCA), will the Government inform this Council:*

- (a) *of the total area of the land in FCA, and how it compares to that falling within the boundary of Shenzhen City;*
- (b) *whether it plans to reduce the area covered by the FCA to make land available for industrial, commercial or residential uses; if not, of the reasons for that; and*
- (c) *of the predominant uses of the land on the Hong Kong side adjacent to the FCA, and whether development plans and infrastructural projects have been formulated for such land; if so, of the details?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President, in accordance with the Public Order Ordinance (Cap. 245), the Government established the FCA south of the Hong Kong Special Administrative Region (SAR)'s land boundary of administration to provide a buffer zone for the SAR security forces to operate effectively against illegal immigration, smuggling and other cross-boundary crimes so that the integrity of the boundary of administration between Hong Kong and the Mainland can be maintained. Information concerning the three points raised in the question is set out in the ensuing paragraphs:

- (a) The FCA covers a total area of about 2 600 hectares. It is known that the Shenzhen authorities have set up a 50-metre-wide "Border Defence Administrative Line" in the area adjacent to the SAR for purposes similar to those of our FCA. The Shenzhen authorities have not measured the total area of that administrative line.
  
- (b) The Administration has from time to time reviewed the need for the FCA and its coverage taking into account public views and the prevailing circumstances. The last review was conducted in 1999. The Administration considers it necessary to retain the FCA policy after the reunification, so as to ensure the integrity of the land boundary of the SAR. This is in compliance with the provisions under the Basic Law that the SAR shall be a separate customs territory and that mainlanders must apply for approval before entering the SAR. The Administration has no plan to reduce the coverage of the FCA at this stage.

A considerable portion of the land within the FCA, comprising mainly fish ponds and hilly terrain, is conservation area, while some areas are taken up by scattered villages and farmland, and some are prone to flooding. In the absence of basic infrastructure, it is very difficult to support major development projects or intensive development plans in the FCA. The long-term development potential of the FCA will be studied in the "Hong Kong 2030: Planning Vision and Strategy" being rolled out by the Planning Department. The Security Bureau will participate in this study.

We will continue to keep in view comments from members of the community and law enforcement considerations, and review the FCA policy and its coverage when appropriate.

- (c) According to information provided by the Planning Department, the land on the Hong Kong side adjacent to the FCA has been planned for different uses depending on the geographical characteristics, infrastructure and ecological environment of different areas. Such uses include the proposed new development area, rural and village development, agricultural use, conservation areas, government facilities and green belts, and so on, details of which are as follows:

- Area from Wo Hang to Sha Tau Kok Road: mainly zoned for rural and village development. Other planned uses include agricultural and conservation areas. Hung Fa Leng which connects the FCA and Sha Tau Kok is a mountain area where no development has been planned.
- The area from Wo Keng Shan to Kong Yiu: now mainly used as a landfill. The long-term use of the landfill after its closure has to be studied in detail. Other areas adjacent to the FCA are mainly green belts, agricultural and rural development areas.
- Ta Kwu Ling, Hung Lung Hang and Fu Tei Au: mainly green belts, agricultural and rural development areas, and government facilities (for example, the water treatment works next to the East Rail at Sheung Shui).
- Kwu Tung North: planned as a new development area to cater for the need of long-term population growth. The concerned government departments are conducting a planning and development study for the area.

### **Plan to Build a Town Park in Eastern District**

18. **MISS CHOY SO-YUK** (in Chinese): *Madam President, the Leisure and Culture Committee of the Eastern District Council passed a motion at its meeting held on 21 September 2000 to strongly request that a town park be constructed on a piece of land zoned as the Aldrich Bay Open Space. Regarding the use of the site, will the Government inform this Council:*

- (a) *whether it has received applications for developing the land for other uses, for example, an ice recreational activities and sports complex; if it has, of the details of the applications and its decisions; if it has decided to approve any of such applications, whether the lease will be granted on a long-term or short-term basis;*
- (b) *whether it will construct a town park on the land, as requested in the motion passed by the Committee; if not, how it will meet the needs of the residents for open space; and*

- (c) *of the planned long-term use of the land and when the relevant project will commence?*

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

- (a) According to the Shau Kei Wan Draft Outline Zoning Plan No. S/H9/10, the site in question is designated as "Open Space". However, any temporary land use would be considered provided that the tenure of use would not exceed five years and its usage would comply with the requirements of the Planning Department. The Lands Department has received an application for using part of the site as a temporary ice-skating rink for a period of two years. The application is now under consideration and no decision has been made.
- (b) In the long term, the site is zoned for a permanent public open space. Presently, part of the site is being used as a temporary works area for road works; another part of it is being converted into an open public transport terminus for local residents' use until the completion of a new permanent public transport terminus in the adjacent estate in around 2005. The remaining portion of the site will be used as a temporary sitting-out area and for temporary land uses considered suitable by the Lands Department. An application for a short-term tenancy for the construction of a temporary ice-skating rink on this part of the site is being considered by the Department. The tenure of all the above temporary land uses would be likely to expire by 2006 after which the Lands Department is scheduled to allocate the site to the Leisure and Cultural Services Department (LCSD) for the development of permanent recreation facilities.

Regarding the current provision of recreation and sitting-out facilities in the area in question, the LCSD has provided a wide range of facilities for residents, including the Aldrich Bay Playground, the Aldrich Bay Children's Playground, the Aldrich Street Playground, the Shau Kei Wan Road Children's Playground,

the Factory Street Playground, the Sai Wan Ho Complex Indoor Games Hall and the newly completed Island East Sports Centre. In addition, the LCSD is constructing a seafront promenade at the Aldrich Bay Reclamation Area. Construction on this project began in August this year and is scheduled for completion in mid-2003.

- (c) The LCSD is aware of the Eastern District Council's concern over the development of this open space, and has already accorded priority to this project by including it into its accelerated programme for new capital works items. The Department will follow up on the planning of this project, with a view to beginning construction in or around 2006.

### **Regulation on Use of Tritium-filled Self-luminous Signs**

19. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, in accordance with the Radiation Ordinance (Cap. 303), apart from those with exemption, licences are required for any person who uses radioactive substances, including the Tritium-filled self-luminous signs installed in buildings for showing exits and ways of escape in case of emergency. As the Radiation Ordinance is not binding on the Government of the Hong Kong Special Administrative Region, the use of those luminous signs in government buildings is not subject to regulation. In this connection, will the Government inform this Council:*

- (a) *of the reasons for adopting different approaches in regulating the use of the luminous signs in government and private buildings;*
- (b) *whether it has conducted any study on the impact of the luminous signs on the health of people living or working in such buildings; if it has, of the findings; and*
- (c) *given that the radiation level of the luminous signs is very low, and users in Canada, the United Kingdom and the United States are not required to obtain licences, whether it will consider removing such requirement; if not, of the reasons for that?*

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

- (a) The objective of the Radiation Ordinance (Cap. 303) is to control the import, export, possession and use of radioactive substances and irradiating apparatus for the protection of the health and safety of the public and workers. Any person who undertakes such activities is required to hold a licence.

Although the Radiation Ordinance is not expressly binding on the Government, administrative procedures requiring government departments to comply with the conditions set out in the Ordinance are in place. The Government's Stores and Procurement Regulations require government departments to make special arrangements for the storage and disposal of radioactive substances in consultation with the Radiation Health Unit of the Department of Health. Regarding the use of self-luminous signs with radioactive substances, the Architectural Services Department has issued a circular to remind project engineers that the statutory requirements under the Radiation Ordinance must be complied with.

- (b) Tritium self-luminous signs are composed of sealed glass fluorescent tubes that produce light when excited by the radiation emitted from the radioactive gas tritium. When properly installed and handled, the tritium gas remains sealed inside the glass tubes and would not pose a health hazard to the occupants of the building where such signs are installed.

Nonetheless, if the tritium self-luminous signs are improperly handled or disposed of, they will release tritium into the environment, and may result in radiation damages to the exposed individuals when tritium is inhaled. Furthermore, compounds containing tritium may undergo various chemical transformations resulting in forms, such as tritiated water, which can enter the body through the skin. The uniform concentration of tritiated water will result in the radiation dose being uniformly distributed throughout the body.

- (c) The International Commission on Radiological Protection has set out guiding principles for exempting radioactive sources from the system of regulatory control. The general requirement is that the sources should give rise to small individual doses and small collective doses in both normal and accident situations. On that basis, the International Atomic Energy Agency has issued a set of basic safety standards that provide recommended exemption levels for individual radioactive substances. The exemption level is 1 billion becquerel for tritium. The European Union has also adopted the same exemption level. Since an average tritium self-luminous sign in the Hong Kong market may contain tritium 300 to 800 times the upper limit for exemption, these signs do not meet the international criteria for exemption.

Based on the information available to us, we understand that in Canada, the United Kingdom and the United States users of tritium self-luminous signs of radioactivity not exceeding specified levels are not required to obtain specific licences. However, they have to comply with other requirements relating to radioactive substances, particularly the recovery and disposal of signs at the end of their useful life. The Radiation Board will keep in view the practices in overseas countries and developments in the field and consider whether any changes are needed.

### **Participation of Youths in Cultural and Arts Activities**

20. **MR LAW CHI-KWONG** (in Chinese): *Madam President, regarding the participation of young persons (including primary and secondary school students) in cultural and arts activities, will the Government inform this Council of the following figures for the past 12 months:*

- (a) *the number of student concessionary tickets sold for each type of "cultural presentations", including music, dance, multi-art, theatre and Chinese Opera performances, and "cultural and entertainment programmes" held at government-managed performing venues, as well as its respective percentage in the total number of tickets sold;*

- (b) *the number of visits by primary and secondary school students to government-managed museums, and its percentage in the total number of visits; and*
- (c) *the number of borrowing of books by persons aged 21 or below at public libraries, together with a breakdown of this figure by gender and age group of the borrowers?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, since its inception, the Leisure and Cultural Services Department (LCSD) has been committed to promoting active participation of the youth in cultural and arts activities. During 2001-02, educational programmes to tie in with current exhibitions or performances, such as lectures, workshops and guided tours, are held at the museums and performance venues on a regular basis. Besides, the Art Promotion Office, the Audience Building Office and the Public Libraries' Extension Activities Unit under the LCSD, which are tasked to promote culture and arts in the community, have plans to organize 8 430 year-round activities for students at a total cost of \$11.5 million. It is expected that about 858 640 students would take part in the activities. On the other hand, more than 200 000 students have joined the music education and instrumental music training programmes organized by the Music Office. In September 2001, the "School Culture Day Pilot Scheme" was launched and some 30 000 students from 30 primary and secondary schools are being offered cultural and arts programmes in the LCSD civic centres, libraries and museums. The aim is to promote students' interests in the arts and foster their creativity.

Against this background, my reply to the three questions is as follows:

- (a) Over the past year, that is, from December 2000 to November 2001, the LCSD has organized and sponsored 1 778 paid cultural performances, including music, dance, multimedia, theatre, opera, Chinese opera and films, attracting an attendance of 836 120. A total of 111 260 student tickets were sold for these programmes, representing 13.3% of the total number of tickets sold. A breakdown of the number of student tickets by category is as follows:

<i>Category</i>	<i>No. of student tickets sold</i>	<i>% of the total no. of tickets sold</i>
Music (including opera)	43 962	14.5
Dance	14 884	12.7
Multimedia	11 693	17.4
Theatre	18 955	19.8
Chinese opera	6 068	4.2
Films	16 204	14.7

Besides, during the past year, the LCSD has organized 629 entertainment activities and 27 large-scale carnivals which are free of charge and are mainly family functions. The total attendance was about 709 310. As these entertainment activities were free of charge, there was no record of student tickets sold.

- (b) During the period from December 2000 to November 2001, 3 273 000 visitors were received by the LCSD museums. Of these, 376 975 visitors were from free group tours for students, representing 11.5% of the total admission. During the same period, a total of 675 158 half-price concessionary admission tickets, representing 20.6% of the total admission, were sold to primary and secondary students, people with disabilities and senior citizens aged 60 or above. Since the museums do not have a separate category of student tickets, no statistics on the number of concessionary tickets sold to students can be provided. In addition, admission to museums is free on Wednesdays. There are no relevant statistics on the categories of visitors.
- (c) During the period from December 2000 to November 2001, a total of 41 676 195 items of library materials were borrowed from the Hong Kong Public Libraries. The record of readers' age profile kept by the Public Libraries are based on age ranges of five years. The number of items of library materials borrowed by readers under 25 years of age is 19 446 113, representing 46.7% of the total borrowed. The detailed breakdown by gender and age group is as follows:

<i>Age Group</i>	<i>Female readers</i>		<i>Male readers</i>	
	<i>No. of borrowed items</i>	<i>%</i>	<i>No. of borrowed items</i>	<i>%</i>
4 and below	241 722	0.6	233 387	0.6
5-9	2 221 341	5.3	1 837 920	4.4
10-14	3 930 065	9.4	2 363 040	5.7
15-19	3 425 783	8.2	2 067 139	5.0
20-24	1 837 920	4.4	1 287 794	3.1
Total	11 656 832	28.0	7 789 281	18.7

Since the number of items borrowed by individual readers varied during each loan, no accurate statistics on the number of borrowers can be provided.

## **MOTION**

**PRESIDENT** (in Cantonese): Motion. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Electoral Procedure (Chief Executive Election) Regulation.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I move that the Electoral Procedure (Chief Executive Election) Regulation be amended as set out on the Agenda.

The Regulation was tabled at the Legislative Council on 14 November 2001. The relevant Subcommittee of the Legislative Council has completed scrutiny of the Regulation. I would like to take this opportunity to express our gratitude to the Chairman, the Honorable IP Kwok-him, and members of the Subcommittee for their co-operation and hard work.

**The Secretary for Constitutional Affairs moved the following motion:**

"That the Electoral Procedure (Chief Executive Election) Regulation, published in the Gazette as Legal Notice No. 233 of 2001 and laid on the table of the Legislative Council on 14 November 2001, be amended:

- (a) in section 2(1) -
  - (i) in the definition of "election expenses", by adding ", but the reference to "an election" in that meaning shall be construed as a reference to an election defined in this section" after "(Cap. 554)";
  - (ii) in the definition of "identity document", in paragraph (b), by adding "or" at the end;
  - (iii) in the definition of "ordinary business hours", by repealing "hour" and substituting "hours";
- (b) in section 4 -
  - (i) in subsection (1) -
    - (A) in paragraph (c), by repealing "card" where it twice appears and substituting "document";
    - (B) in paragraph (d)(ii), by repealing "card" and substituting "document";
  - (ii) in subsection (2), by repealing "card" and substituting "document";
- (c) in section 10, by repealing "section 23 of";
- (d) in section 40(2)(b), by adding "in" before "subsection";
- (e) in section 48(2), by repealing "票主" and substituting "舉主";

- (f) in section 60(3), by repealing "Returning" where it secondly appears and substituting "Chief Electoral";
- (g) in section 69 -
  - (i) by repealing subsection (2)(e) and substituting -
    - "(e) a person who enters or stays in the counting station by virtue of section 46(3).";
  - (ii) in subsection (3) -
    - (A) in paragraph (a), by repealing "Commissioner for Oaths" and substituting "commissioner defined in section 2 of the Oaths and Declarations Ordinance (Cap. 11)";
    - (B) in paragraph (b), by repealing everything after subparagraph (i) and substituting -
      - "(ii) a member of the Commission;
      - (iii) a justice of the peace;
      - (iv) a commissioner referred to in paragraph (a); or
      - (v) the Chief Electoral Officer.";
- (h) in section 81(5) -
  - (i) in paragraph (c), by repealing "or" at the end;
  - (ii) in paragraph (d), by repealing the full stop and substituting "; or";
  - (iii) by adding -

"(e) of such other class or type as the Commission may specify by notice published in the Gazette." "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Constitutional Affairs be passed.

**MR IP KWOK-HIM** (in Cantonese): Madam President, as Chairman of the Subcommittee on subsidiary legislation relating to the election of the Chief Executive, I submit a brief report on the deliberations of the Subcommittee.

The Electoral Procedure (Chief Executive Election) Regulation provides for the electoral procedures for the election of the Chief Executive. The Subcommittee had some discussions on the major provisions contained therein.

The Subcommittee notes that for nominations a candidate is not required to lodge any election deposit in view of the requirement for a candidate to obtain not less than 100 Election Committee members as his subscribers. A Nominations Advisory Committee is also not required because the Electoral Affairs Commission will appoint a Judge of the High Court or above as the Returning Officer.

Regarding polling arrangements, members of the Subcommittee note that there will be a new round of voting if no candidate obtains an absolute majority of votes after the counting of votes. Members have requested the Administration to furnish more details about the polling arrangements. The Administration has advised that to allow electors sufficient time to cast their votes, the Regulation provides that not more than three rounds of voting shall be conducted on each day. The Chief Election Officer will appoint the polling hours for the first three rounds of the voting on the polling day, that is, 9 am - 10 am, 2 pm - 3 pm and 7 pm - 8 pm. Where no candidate is elected after the first three rounds of voting, the fourth and subsequent rounds of voting, if any, will be held on the day immediately following the polling day.

The Subcommittee is also concerned about why there is no provision in the Regulation for special polling stations to be specified for voting by persons with a disability, similar to that adopted for Legislative Council elections. The Administration has explained that in view of the large number of polling stations

for Legislative Council elections, it is necessary to designate special polling stations for disabled persons. However, for the 2002 Chief Executive Election, both the poll and the count will be conducted at the Hong Kong Convention and Exhibition Centre, which is equipped with facilities for the disabled. Therefore, the Administration does not think it is necessary to make arrangements through administrative means or make provisions in the Regulation for the purpose.

Just a moment ago, the Secretary for Constitutional Affairs moved some amendments to the Regulation and these amendments have been discussed and endorsed by the Subcommittee.

Thank you, Madam President.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak in reply?

(The Secretary for Constitutional Affairs indicated that he did not wish to reply)

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

(Members raised their hands)

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

(No hands raised)

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

**MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Maximum Amount of Election Expenses (Chief Executive Election) Regulation.

**PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

The examination of the Maximum Amount of Election Expenses (Chief Executive Election) Regulation by the Legislative Council today comes across to me as very ludicrous. This is because it has been reported that TUNG Chee-hwa will formally announce that he will run for another term of office tomorrow. This week has become the "TUNG Chee-hwa week". The 800 wealthy businessmen and the powers-that-be having a part in the coterie election, in toeing the line of the Central Government closely, gave TUNG their full backing. JIANG Enzhu of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (Liaison Office) also made no attempt to avoid any allegation and backed Mr TUNG in running for a second term. By interfering with the elections of the Special Administrative Region (SAR) unreservedly, he has forgotten Hong Kong's "high degree of autonomy" and the sacred rule that the Liaison Office cannot meddle with the affairs of the SAR. Madam President, one of the most important manifestations of a high degree of autonomy is a system of free elections, not a system of preordination by leaders of the Central Government. Now that a high degree of autonomy has become a high degree of preordination, what else is there for Hong Kong people to elect? What else is there for the small circle to elect?

Now we are discussing the election expenses limit as though it mattered. However, TUNG Chee-hwa, having been preordained by the Central Government which is courted by the rich and the powerful, will very likely be automatically elected, rendering the discussion on election expenses meaningless. The limit proposed by the Government is \$9.5 million, and the limit proposed by me on behalf of the Democratic Party is \$4 million. I am afraid both amounts are too much, since given preordination, the whole affair has been decided and

the election has become a farce by the small circle, a shoe-shining game of "Donning the Emperor's Robe". The excitement and ecstasy of the 800 persons in the small circle are in stark contrast to the pent-up grievances of 7 million ordinary members of the public under the economic recession and the widespread laments in the face of unemployment and layoffs. All this makes up a caricature of "wealthy families busy shoe-polishing, Hong Kong people left languishing". It is truly disheartening to discuss the wrong subject at a wrong time in a wrong setting.

However, in spite of this, I am duty-bound as a Legislative Council Member to scrutinize the Maximum Amount of Election Expenses (Chief Executive Election) Regulation in accordance with the law. The expenses limit for the Chief Executive Election was discussed in the meetings of the Subcommittee. Several factors should be considered in setting a reasonable expenses limit for the Chief Executive Election.

The first is the number of registered voters in an election, which is a basic principle that was followed in the past. When the Government proposed the expenses limit for the Legislative Council Election in 2000, the expenses limit proposed for Geographical Constituency elections varied from \$1.5 million to \$2.5 million according to the size and population of the constituencies. The expenses limit for Functional Constituency elections varied from \$100,000 to \$480,000, depending on the number of voters in the constituencies. If the number of voters in a Functional Constituency is less than 5 000, then the election expenses limit is \$160,000. Therefore, the election expenses for a coterie election involving 800 persons should not be more than \$160,000. Similarly, the expenses limit for the election in 1998 was just the same as that in 2000. Past experience shows that an election expenses limit of \$160,000 is appropriate for a coterie election involving 800 persons.

Madam President, according to this principle of electorate size, it is reasonable, as a starting point, to set the election expenses limit for the election of the Chief Executive, who is chosen by a small circle of 800 persons, at \$160,000. After all, this is merely a coterie election, since the overwhelming majority of Hong Kong people are not eligible to elect the Chief Executive. They can only watch others elect the Chief Executive on television and the Chinese character "正" being written on the whiteboard one after another. I am afraid it is not even necessary to write any character "正" this year.

Madam President, using the Legislative Council elections as a point of reference, let us now look at the last Chief Executive election. Since the Chief Executive Election has been held only once, and since this is the first time that the SAR Government formulates electoral regulations, the only experience we have is the Chief Executive Election of 1996. At that time, there were three candidates and no expenses limit was imposed. The Chief Executive elect, TUNG Chee-hwa, spent a total of about \$2.7 million in election expenses. This amount included expenses on office rental, employment of campaign and research staff, consultancy fees, organization of activities and press conferences, printing of publicity materials, press cuttings, telephone and postage, stationeries, office equipment and related installation fees, as well as miscellaneous expenses. \$2.7 million was already sufficient for a normal and regular coterie election.

To the residents of the SAR, the first Chief Executive Election was novel. The face of each candidate was also new to them. Hong Kong people were also not informed of the candidates' philosophy of governance and their ideas and plans in respect of public policies. Therefore, all the candidates had to make gratuitous use of the mass media, in particular the electronic media, to publicize their election platforms to the people of Hong Kong. We can see that it cost TUNG Chee-hwa, who was elected Chief Executive eventually, just \$2.7 million to conduct the electioneering campaign and win. Therefore, we believe that the practical experience of the first Chief Executive Election should also be an important factor.

A comparison of the expense items proposed by the Government today and in that year will reveal that in respect of office rental, only \$60,000 was incurred that year, while the amount proposed by the Government this year is \$1.2 million; with regard to campaign staff, only \$940,000 was used that year, but this year the amount estimated to be required is \$2.3 million; in respect of consultancy services, only \$470,000 was spent that year, whereas \$1.5 million is needed this year; as far as publicity and promotion are concerned, publication and postal expenses cost a total of almost \$340,000 that year, but \$3 million is needed this year. The Government proposed only one additional item this year, that is, \$1.5 million for policy research. Even though the Government tried to offer all kinds of explanations on the election expenses for this year, what it cannot explain is why, at a time of economic recession, when prices have dropped, the expenses for the Chief Executive Election alone have increased drastically. Compared to 1997, the rentals and expenses nowadays should have gone down in tandem with deflation. Whereas only \$2.7 million was incurred that year to set

up the election office, hire campaign staff, engage consultancy services and conduct a publicity campaign, we cannot see why the same amount is now highly inadequate. The present election expenses limit proposed by the Government is higher than that actually incurred by the candidate elected in the last election by a net \$6.8 million, which is three and a half times the actual expenses in 1997. One cannot help but suspect that the figures have been inflated and boosted.

Madam President, in proposing an expenses limit of \$9.5 million for the Chief Executive Election, the Government said that the administration by the Chief Executive is closely related to the well-being all members of the public in Hong Kong, therefore the candidates for the Chief Executive must publicize their election platforms to the public. In fact, it is precisely because of this close relation that the people of Hong Kong and the Democratic Party have fought persistently for a long time for the direct election of the Chief Executive by all members of the public through "one person, one vote", so that the Chief Executive will be accountable to the general public of Hong Kong.

Even if the candidates for the Chief Executive have to publicize their election platforms to the general public of Hong Kong as was the case in the last election, still it is not necessary to spend as much as \$9.5 million. We are concerned that the Chief Executive Election would become an election open only to the rich and it will be dominated by money.

We believe that for a coterie election involving 800 persons, using an election expenses limit of \$160,000 as a starting point, and taking into account the fact that the actual expenses of the Chief Executive elect in the first Chief Executive Election were \$2.7 million, as well as the new expense item on policy research and deflation of the last several years, an election expenses limit of \$4 million for the Chief Executive Election is already a very reasonable and acceptable amount which will be sufficient for all candidates to engage in a fair competition.

In fact, an expenses limit of \$4 million for a coterie election of 800 persons will amount on average to an expense of \$5,000 on each vote, which is already quite expensive. In the long run, if future Chief Executives are elected by direct election through "one person, one vote", we believe the expenses limit for the Chief Executive Election can be further adjusted according to the number of

voters then. All in all, we do not wish the Chief Executive Election to become a game monopolized by the rich.

I propose on behalf of the Democratic Party the motion under my name to adjust the Chief Executive election expenses limit downwards from \$9.5 million to \$4 million, and hope that Members will support it.

Thank you, Madam President.

**Mr CHEUNG Man-kwong moved the following motion:**

"That the Maximum Amount of Election Expenses (Chief Executive Election) Regulation, published in the Gazette as Legal Notice No. 232 of 2001 and laid on the table of the Legislative Council on 14 November 2001, be amended, in section 2, by repealing "\$9,500,000" and substituting "\$4,000,000"."

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

**MR IP KWOK-HIM** (in Cantonese): Madam President, as Chairman of the Subcommittee on subsidiary legislation relating to the election of the Chief Executive, I submit a brief report on the deliberations of the Subcommittee.

The Maximum Amount of Election Expenses (Chief Executive Election) Regulation prescribes the maximum amount of election expenses at \$9.5 million for an election to elect the Chief Executive. The Administration explained that the policies of the Chief Executive would affect the well-being of all residents in the Hong Kong Special Administrative Region (SAR). For this reason, the election expenses limit for the Chief Executive Election must be sufficient for candidates to publicize their election platforms to all residents of the SAR. The purpose of providing for an election expenses limit is to allow a candidate to use as much financial resources as he is entitled to use to promote his election, subject to the maximum amount prescribed. A candidate has complete discretion to decide on the amount and the type of election expenses to be spent. The Administration has provided further details to the Subcommittee regarding how the \$9.5 million was arrived at.

Some Legislative Members, who are not members of the Subcommittee, took part in the discussions of the Subcommittee. They queried the grounds for setting the election expenses limit. They opined that in setting the limit, consideration should be given to the election expenses of the three candidates in the first term of the Chief Executive Election held in 1996. They had reservations about the view that a candidate has to publicize their election platforms to all Hong Kong residents given that the Chief Executive was not returned by universal suffrage. According to the data supplied by the Administration, among the three candidates in the 1996 Chief Executive Election, only the incumbent Chief Executive has told the public that the relevant expenses totalled around \$2.7 million.

A member of the Subcommittee pointed out that it would not be appropriate to compare the expenses for the present Chief Executive Election with those in the first term Chief Executive Election which was held at a time when Hong Kong was still governed by the British Government. There was also a member who thought the powers and responsibilities vested in the Chief Executive cover a wide range of matters relating to the SAR and a candidate has to conduct territory-wide electioneering activities; hence, it is just reasonable that the election expenses for 2002 should be higher than those in the first term Chief Executive Election. After some discussions, the Subcommittee supported the maximum amount of election expenses proposed by the Government.

Madam President, may I now seek leave from you so that I can speak in my personal capacity on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB).

The DAB supports setting an election expenses limit for the Chief Executive Election.

The second term of the Chief Executive Election to be held in March next year is subject to Annex I to the Basic Law. The next Chief Executive will be elected by an Election Committee (EC) consisting of 800 persons of wide representation. The 800 persons come from various sectors in Hong Kong, including the professions, the industrial, commercial and financial sectors, the labour sector, members of the Legislative Council, Hong Kong delegates to the Chinese People's Political Consultative Conference, Hong Kong deputies to the National People's Congress, and so on. In the 800-person EC, the number of members returned by each sector shall be prescribed by an electoral law enacted by the SAR in accordance with the principles of democracy and openness.

Thus, it can be seen that each representative of the EC has wide representativeness and among them are members of the Legislative Council returned by direct elections in five of the major districts in Hong Kong.

Article 43 of the Basic Law clearly states that the Chief Executive of the SAR shall be the head of the SAR and shall represent the Region. The policies of the Chief Executive will affect the well-being of all residents in the SAR. So, a Chief Executive candidate will answer not only to the 800 members of the EC but also to all of the people in Hong Kong. His campaign will be territory-wide and he must explain clearly to all the people of Hong Kong his election platform, blueprint and philosophy of governance ideas, and so on. Therefore, to set the maximum amount of election expenses at a reasonable level, full consideration must be given to the actual needs of a candidate in setting up an election office, employing campaign staff, engaging consultants, carrying out researches and launching publicity and promotion activities. Furthermore, to make a new candidate known to all Hong Kong people within a short time so that the public can have an in-depth knowledge about him and accept him, ample resources have to be deployed. Thus, the maximum amount of election expenses must reflect fully the needs of a candidate in the process.

Madam President, some members were worried that an exceedingly high election expenses limit could deter people with insufficient means from standing for election and so the limit should be revised to \$4 million, with reference to the elections expenses spent in the last election. However, the DAB opines that this Chief Executive Election is different from the last one, which took place when Hong Kong was still a colony under British rule and the candidates could not conduct a large-scale campaign. Now, Hong Kong has become a SAR with "Hong Kong people ruling Hong Kong". A Chief Executive candidate, whoever he is, must face and be monitored by all Hong Kong people. The election is transparent. The DAB is not worried that the limit would deter people from standing for election. A capable candidate will definitely be able to raise the necessary funds. Past election experiences show that a candidate who spent the most amount of money does not necessarily mean that he would be elected.

Therefore, the DAB considers the election expenses limit of \$9.5 million acceptable for this election.

With these remarks, Madam President, I oppose the resolution.

**MISS MARGARET NG** (in Cantonese): Madam President, I rise to speak in support of the Honourable CHEUNG Man-kwong's amendment.

There must be a limit on the expenses of the election of the Chief Executive, which is a consensus of the majority public. The main reason is that we must ensure there is a fair election in which people with the means will not enjoy an excessive advantage. In the interest of the Hong Kong public, candidates with talent and vision should be encouraged to stand for election so that the office of the Chief Executive is filled by a capable person. The election should not be reduced to a privilege for the rich and influential; nor should the office of Chief Executive be an office that serves the rich and influential.

Some say past election experiences in respect of the Legislative Council show that abundant resources did not guarantee success. Candidates who spent the most money might not necessarily be elected. I certainly agree with that, but that does not mean election results are not related to expenses. In fact, the ability to raise sufficient funds is often a determining factor in one's decision to stand for election, and the meaning of "sufficient funds" is often linked to the election expense limit.

Obviously, sufficient funds make more and larger-scale campaigns possible and more people will come to know a candidate and his election platform. Sometimes, a good candidate may not obtain the support he deserves, for voters do not have sufficient opportunities to know him.

The effect of setting an election expenses limit is to enable all candidates, irrespective of their wealth, to compete with the same amount of resources. Otherwise, a candidate with enormous resources, television promotions and a large team of experts and campaign assistants will drive his opponents into an unfair position in the election.

Enormous expenses necessitated for an election will likely cause problems to arise in respect of the honesty of the candidates and the election as a whole. A candidate may, for example, make certain promises in his election platform or promises for future benefits in favour of some consortia in exchange for their support. Another effect of setting an election expenses limit is to facilitate audit on election expenses.

In fact, an excessively high limit is tantamount to no limit at all. This is self-explanatory. If it is agreed that a limit should be set, then the limit must be set at a reasonable level, otherwise by and large many of the disadvantages of a lack of a limit may surface.

Madam President, the \$9.5 million limit proposed by the Government is completely groundless. First, election expenses have been based on the number of voters. Compared to an Election Committee (EC) with only 800 members, the limit is absurd. For the same EC, the limit for a candidate during the Legislative Council election was only \$160,000, which is a very small amount in comparison.

According to the papers submitted by the Government to the Panel on Constitutional Affairs, the limit for the five Geographical Constituencies in Hong Kong, Kowloon and the New Territories in the Legislative Council election was \$10 million. That implies that the Chief Executive Election is treated as if it were a popular election for all, and the candidate is treated as if he were taking part in a direct election in the five Geographical Constituencies. This is blatantly passing off the sham as the genuine. Madam President, I do not mean to criticize coterie elections in this debate, but the election of a Chief Executive by 800 people and the election of a Chief Executive by universal and popular election are two completely different things. It is absolutely untenable to define a limit for election expenses for 800 people using a universal and popular election for all as a basis.

The Administration pointed out that the limit set must be able to allow all candidates to stand for election in a level playing field. The incumbent Chief Executive inevitably enjoys a great advantage in terms of fame and exposure. Any challenge must have the suitable resources before he can pose a real challenge to the incumbent. Thus, the limit cannot be too low. This I agree. But this factor should not be over-exaggerated. One reason is that election rules must be strictly enforced, and one of them is about this subject. The other reason is that a Chief Executive candidate is no John Doe and the media will definitely give him priority coverage.

For a similar reasoning, the Administration pointed out that a Chief Executive candidate has to face to all Hong Kong people, not just to 800 people. This I can agree too. But I think what the Government is doing serves to enlarge the factor indefinitely. The enormous gap between \$160,000 and \$10 million cannot be explained away by this factor alone.

Some academics think that, on this subject, we should strike a middle ground. Mr Ivan CHOY from the Division of Social Studies of the City University of Hong Kong once commented that a limit of \$5 million was good enough. The \$4 million proposed by Mr CHEUNG Man-kwong today is a balanced limit and worthy of our support.

I am afraid that in the process of scrutinizing some rules and regulations relating to the election of the Chief Executive, the legislation has become a tool of flattering. Knowing that the Chief Executive, Mr TUNG Chee-hwa, will stand for election, some people set an exceedingly high limit for fear that Mr TUNG's election campaign may be restrained. From recent developments, we can see that this is not just an excessive worry. If this is a fact, it would mean a disaster for Hong Kong people. I hope the Government would think over the matter again.

Madam President, I so submit.

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

**MR JAMES TIEN** (in Cantonese): Madam President, on the issue of whether or not election expenses should have a ceiling, or what should be the amount of such a ceiling, the Liberal Party thinks that no ceiling should be set. In the course of deliberating on the Regulations, we have made this clear on a number of occasions.

It remains of course that opinions vary as to what constitutes a fair election. There are people who on many occasions have encouraged members of the Liberal Party and the business sector to stand for elections in Hong Kong. These elections are not functional constituency elections, but all kinds of direct elections which take place in Hong Kong. In circumstances as these, what can be said to be a fair election? Let me cite an overseas example. Take the presidential elections in the United States as an example. These are a rivalry between the Democrats and the Republicans there. Their figures show that the Democrats have a lot of volunteers and so their expenses are significantly less. But the Republicans have less volunteers and they have to hire people to work for them, so their expenses are greater. However, as we look at American history,

we will find that the performance of the two parties in the elections is more or less the same. Both have won and lost in the elections. The fact is that the Republican Party which has greater expenses will not win every time. In the recent election, it can be said that they won by a very narrow margin. The elections led to a lot of disputes, but in the end the Republicans won.

In our opinion, if more people are encouraged to take part in political activities, then the elections would be fairer. It does not matter whether the candidates come from big corporations or small and medium enterprises. Those who are not rich should pitch in their efforts and those who cannot pitch in with their efforts should do so by spending more money. This is what I think to be a fair and just election. For if not, if on the one hand people are encouraged to stand in the elections, but on the other they are barred from finding volunteers to help them, then how can the candidate do the work all by himself? Even if the candidate has money, he is not allowed to use it, and he would violate the law if he does so.

Therefore, Madam President, apart from the election of the Chief Executive, the Liberal Party holds the same view with regard to elections of the Legislative Council and the regional direct elections. In each of these elections our expenses have not reached the prescribed ceiling, for we think the amount we have spent is sufficient. In any case, we think that no ceilings should be set on election expenses.

Madam President, the other thing which I would like to discuss is television commercials. People overseas are of the view that of the various kinds of media, television is the most influential. And so in almost every place in the world, the television is used to broadcast election commercials or to release reports. Candidates are of course required to declare their expenses in this regard. But in Hong Kong, and even to this day, candidates are not allowed to make any publicity on the television. The same applies to the Chief Executive election and the Legislative Council elections. If candidates are allowed to do so, transparency would become imperative. If only the candidates declare their expenses, for example, how much they have spent on the television and on newspaper advertisements, or how many publicity letters they have sent, if all these can be made with a high degree of transparency and the people are aware of what the candidates are doing before they cast their votes, or if the people can make a wise decision on the basis of these publicity materials, then there should not be any problems.

In view of the above, the Liberal Party does not support setting any ceiling on election expenses. With regard to Mr CHEUNG Man-kwong's proposal to set the ceiling for election expenses at a lower amount than the original some \$9 million, the Liberal Party will not lend its support.

**MISS EMILY LAU** (in Cantonese): Madam President, I do support setting a maximum amount of election expenses, as I have said on a number of occasions. I hope Hong Kong will not model on neighbouring countries which are fraught with corruption.

However, we are talking about the election on 24 March next year, which is in fact not an election. Madam President, I do not think many people will believe that is a competitive election. Thus, it would be talking above the heads of the people to say \$9 million-odd is required as election expenses. As we have talked about this many times in the relevant Panel, and as the Honourable Margaret NG has mentioned just now, with 800 voters, how can one arrive at an election expense of \$9 million-odd? But, Madam President, the executive authorities told us they were going to put up a show and promote the event as if it were a real election, new arrangements from the Post Office would make it possible to send several million circulars to people's homes without having to be given their addresses, advertisement boards and posters would be put all over the streets and everything would be run as a show. I think this is cheating the people by making them feel as if a real election was going on because they would be receiving election materials and they would see the boards and posters in the streets. I do think this is cheating the people and a shameless show. There are only 800 voters and that should be admitted as a fact. Why bother to pretend there are several million voters?

Madam President, some Members say the \$9 million-odd maximum amount of election expenses seems to be tailor-made for the Chief Executive. Why must the election headquarters be located at a Class A office in Central? Oh, he has rented an office in Garden Road but this law is not yet passed. It was thought many events could be covered up for several weeks but within several days matters were exposed. I cannot help asking this question: Is that what a government with a sense of shame should do?

Madam President, I reiterate that there should be a maximum amount of election expenses and I will surely support it. However, this is a hypocritical

move, a bogus election. Why bother to set a maximum or a minimum? But the consequences would be even worse if we objected to today's motion. The Liberal Party has already raised its objection and the election expenses may not be subject to any limit. I will not agree to an amount of election expenses without limit.

Madam President, I was glad to hear that the Liberal Party wanted to take part in elections. Indeed I have always tried to lobby them and, Madam President, I also lobby you and many others to take part in one-person-one-vote direct elections. I would like to tell colleagues from the Liberal Party not to fear. They are already rich and if they are willing to become candidates they may have a chance to win if the people thought they could support their election platform. Thus, one does not need to use money to make up for voters.

However, Madam President, I must return to the subject we are talking about today: this election that we are talking about is not a genuine election. Our Coalition Against Second Term will not join the electioneering activities because we do not want to help mislead the people into believing that the election is worthwhile despite some imperfections, making them think that this is the only thing to do, given the limited space available; or that they may try their best to take part in and make the election complete, despite the most unfavourable situation. Madam President, we do not want to deceive the people of Hong Kong. Nor will we support Mr CHEUNG Man-kwong's amendment.

**DR YEUNG SUM** (in Cantonese): Madam President, the election expenses ceiling of \$9.5 million proposed by the Government is utterly ridiculous. It is just a coterie election for 800 people, but the Government has proposed to set the ceiling at \$9.5 million on the basis of the expenses spent on the direct elections held in five large constituencies all over Hong Kong. I do not know what the justifications of the Government are, but computations with reference to direct elections are really absurd. The Government has even failed to offer any sensible justifications. That such a naive and absurd proposal has been tabled by the Government before this Council is really incredible. I just do not know whether there is any sense in this proposal.

One may argue that this is just a ceiling, and that actual expenses may not really reach this ceiling. But still, this ceiling will still put those candidates who have financial means in a more advantageous position than those who do not. If

an election is to be held in a level playing field, why do we have to accord special treatment to those extremely rich candidates? Well, if that is not any special treatment, then why is the ceiling set so high? I basically agree that the amendment of Mr CHEUNG Man-kwong is appropriate, because the expenses incurred by Mr TUNG in the last election were just about \$2.7 million. Even if more may be spent this time, say, \$1 million more has to be spent, we guess the total amount will just be about \$4 million. This is a more appropriate amount.

I wish to take this opportunity to raise a point which I have raised before. We can in fact follow the examples of Taiwan and Germany. While encouraging political parties to run in elections, we may tell them that there will be a refund of election expenses at a fixed percentage, depending on the number of votes a candidate get. This can encourage people from different sectors to run in elections. However, this is only suitable for direct elections; the election under discussion now concerns only the Election Committee of 800. There is basically no need to consider the above idea for the election. My only purpose is to remind the Government that the introduction of such a practice, that is, the practice adopted in Germany and Taiwan, can be considered for direct elections of the Legislative Council in the future, so as to encourage more people, more political parties, to run in the elections. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I object to the motion moved by Mr CHEUNG Man-kwong. The Administration considers the election expenses limit for the Chief Executive Election proposed by Mr CHEUNG Man-kwong groundless and not meeting practical needs. We are of the view that the limit of \$9.5 million initially proposed by the Administration is more in line with the practical needs and hence no amendment is required.

Some Members have just described our proposal as ridiculous. I am very surprised at such a comment. If our proposal were ridiculous, then Mr CHEUNG Man-kwong's proposal would at least be half as ridiculous. Would it be a typical case of "a pot calling a kettle black"?

First, I would like to elaborate on the Administration's rationale for setting the election expenses limit at \$9.5 million. As we have reiterated at meetings of the Legislative Council Panel on Constitutional Affairs and of the Subcommittee responsible for scrutinizing the Regulation, the election expenses limit of \$9.5 million is prescribed on account of the functions and powers of the office of the Chief Executive to be contended and the tremendous impact of the election platform proposed by the candidates on the residents of the territory. The candidates, therefore, need to promote their election platform to the 6.7 million residents of Hong Kong through the Election Committee (EC) members. Their targets are not only 800 people.

Article 45 and Annex I to the Basic Law provide that the Chief Executive shall be elected by a broadly representative EC, and be appointed by the Central People's Government. Most EC members are elected from different sectors and represent different walks of life in the community.

Article 43 of the Basic Law provides that the Chief Executive shall be the head of the Hong Kong Special Administrative Region (SAR) and shall represent the SAR. The functions and powers conferred on the Chief Executive by the Basic Law cover a wide range of matters relating to SAR. The policies of the Chief Executive will affect all residents in the SAR. As a result, candidates running for the office of the Chief Executive have a legitimate need to publicize their election platform to the public at large. As such, the election expenses limit for the Chief Executive Election must be set at a sufficient level for candidates to publicize their election platform to all residents of the SAR. In this connection, it is pertinent to note that the total of the election expense limits for the five Geographical Constituencies of the Legislative Council elections is equal to \$10 million.

On the premise that candidates of the Chief Executive Election need to carry out a territory-wide campaign, we consider that the election expenses limit should be derived having regard to the following five categories of expenses: First, expenses for setting up an office as the election campaign headquarters; second, expenses on employing campaign staff; third, expenses for engaging professional services; fourth, expenses for carrying out policy researches; fifth, expenses for publicity and promotion. Members should note that \$9.5 million is the proposed ceiling on election expenses. A candidate has complete discretion to decide on the amount and types of election expenses insofar as he does not spend in excess of the prescribed election expenses limit.

Madam President, Mr CHEUNG Man-kwong moves that the maximum amount of election expenses to be incurred at the Chief Executive Election be revised and reduced to \$4 million. The Government considers the proposed revision unnecessary and ill-founded.

I believe that Mr CHEUNG's proposal is made on the basis of the election expenses incurred in the First Chief Executive Election. At that time the total election expenses incurred by the incumbent Chief Executive amounted to about \$2.7 million. Regarding this figure, I would like to draw Members' attention to two points. First, the incumbent Chief Executive's election expenses on the First Chief Executive Election were incurred in a matter of only two months, from 17 October to 15 December 1996. This is clearly spelt out in the relevant auditor's report. Our proposed limit of \$9.5 million, however, is meant to cover expenses over a five-month period from December 2001 to April 2002, if the Second Chief Executive Election is quoted as an example. We consider it reasonable to make provision for expenditure needs covering five months so as to allow candidates ample time for setting up campaign offices, canvassing for votes and, winding up campaign offices and dismissing their staff when the election comes to an end. If expenses were calculated on a five-month basis, then the election expenses incurred by the incumbent Chief Executive in the First Chief Executive Election would have risen from \$2.7 million to \$6.5 million, far exceeding the expense limit of \$4 million proposed by Mr CHEUNG Man-kwong.

Secondly, the incumbent Chief Executive did not send publicity materials to all residents in the territory by post in the first election. We believe that there is a need for the cost of postage to be included in the election expenses limit to allow candidates to employ such a means to reach all residents in the territory. If this cost had been included, the estimated expenses of the incumbent Chief Executive in the First Chief Executive Election would have risen to \$9 million.

Madam President, we consider that it is reasonable and appropriate to set the election expenses limit at \$9.5 million. We have assessed the various expenditure needs of candidates in prescribing the expenses limit for the Second Chief Executive Election. It roughly tallies with the expenses limit set for the five Geographical Constituencies of the Legislative Council elections, and with the revised actual expenses for the First Chief Executive Election.

I ask on these grounds that Members vote against Mr CHEUNG Man-kwong's motion. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr CHEUNG Man-kwong, you may now reply.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, when I proposed the amendment, many of my arguments were made in fact in response to those arguments advanced by other Members and the Government. However, I would still like to talk about several points.

First, there is the view that Hong Kong was still a British colony when the Chief Executive Election was held in 1996. It was different from the case now because the territory is under the rule of the SAR Government. Formerly there were restrictions on making publicity to the people of Hong Kong. Now there are no such restrictions and so publicity can be made as extensive as one wants. Dear friends, we remember that the media at the time of the British rule are still the same media under the SAR Government. If Members still recall, when the Chief Executive Election was held last time, one could see every day how the media reported on the three candidates. Such coverage was extensive and detailed. This included their election platforms, even the occasional conflicts of opinions and all the details and ongoing changes in the campaign. Coverage in both the print and electronic media was made. If at that time and in circumstances as these the candidates could make their platforms known to all of the people of Hong Kong, there is no reason why they cannot do the same today. Why then are the expenses of making publicity or making publicity to all the people of Hong Kong much more expensive than it used to be?

Second, the election period is changed from two months to five months. To put it frankly, that is precisely what I meant by putting on a false show. The election may formally start from the rally tomorrow and will finish when the nomination period ends. In this regard, just how much publicity work needs to span all these five months? Actually we do not have to set our eyes on a distant future, we need only look at the present and see roughly how things are. And there is no need to say boldly that the ceiling for election expenses should be set at such and such an amount.

Frankly, I can only make an adjustment on the basis of the \$2.7 million of election expenses which TUNG Chee-hwa spent in the last election when there were three candidates running in the election. When the amount is adjusted, there are some expenses which the Government has proposed, but are not counted when the election expenses of TUNG Chee-hwa were audited. So the

ceiling is raised to \$4 million. But as I have said earlier, it looks now even \$4 million is too much. There may not even be a need to use \$4 million before he is elected. One just wonders whether there is even a need to hold an election any way.

So my dear friends, the ceiling of \$4 million proposed by us is worked out at least on the basis of the expenses spent by TUNG Chee-hwa in the last election when there were three candidates. Then an adjustment is made. The amount is not worked out on the basis of the expenses of \$10 million in the direct elections where there were five constituencies, followed by a deduction of \$500,000. So the argument presented by me is valid. Certainly I know that even if the publicity is targeted at all the people of Hong Kong, it does not follow that every one can take part in the election. For from beginning to end the people can only watch the election process, or even watch how someone is elected automatically. Therefore, Madam President, I still propose my amendment of setting the ceiling for election expenses at \$4 million. Thank you.

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

(Members raised their hands)

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

(Members raised their hands)

Mr CHEUNG Man-kwong rose to claim a division.

**PRESIDENT** (in Cantonese): Mr CHEUNG Man-kwong has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, four were in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, nine were in favour of the motion and 13 against it. Since the question was not agreed by a

majority of each of the two groups of Members present, she therefore declared that the motion was negated.

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. Members should be very familiar with the time limits for speeches. I only wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Reviewing the pay adjustment mechanisms of statutory bodies and the Hong Kong Monetary Authority.

## **REVIEWING THE PAY ADJUSTMENT MECHANISMS OF STATUTORY BODIES AND THE HONG KONG MONETARY AUTHORITY**

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

Members of the public have harboured a lot of queries on the operations and salaries and fringe benefits of public bodies like the Hong Kong Monetary Authority (HKMA), the Kowloon-Canton Railway Corporation (KCRC), the Hong Kong Housing Society (HS), and so on, whose funds come directly from the Government. Recently, there has been wide media coverage of controversies like the squandering of public money by the KCRC and the handing out of huge bonuses by the Mandatory Provident Fund Schemes Authority (MPFA) despite losses in investment. These events made the public query all the more whether or not these public bodies are really serving public interest and whether or not they rightly deserve to be called public bodies.

Doubtless in the eyes of the public, these public bodies are operating without much accountability, effective supervision and sufficient transparency. They are like independent kingdoms, some of them have even been criticized as clubs for retired senior government officials. With regard to the management of these organizations, often there are the so-called "face parties" where people come to the party to show their support for some senior executives, to give them face, so to speak. Or there may be a "shoulder patting" culture (where things are done out of favouritism). On the one hand there is gross generosity with the

salaries of the senior executives given out of public coffers. On the other hand these organizations are showing an indifference to the plight of the people and flatly refuse to do anything to tide over the difficulties together with the people. The leaders of these organizations often act in arrogance and show a disregard of public opinion. How can this management style found in public bodies serving the public get any public support?

First of all, I would like to talk about a few recent incidents which have aroused public concern because of the blunders involved. The first one is the right to develop the KCRC Hung Hom station superstructure. It was awarded to Cheung Kong Holdings by way of single tender. Then as a result of the adverse market conditions and other reasons, Cheung Kong Holdings withdrew unilaterally. However, as no contract has been signed, Cheung Kong is not obliged to make any compensation. Who then should be held responsible for such kind of a blunder?

While memories of the past misdeed of the HS are still fresh, the HS made a recent announcement of its plans to construct housing in the Mainland and that was attacked as not minding its principal business. The Government made an unusual and strong reaction to the idea. At first, the Secretary for Housing seemed to know nothing about this plan of housing construction in the Mainland. Does this show that there is insufficient monitoring by the Government of these organizations? The HKMA plans to use \$3.7 billion from the Exchange Fund to purchase some property. Leaving aside the question of whether or not any prudent considerations have been made of the legal basis of such an action, we query whether a regulatory body like the HKMA has to use such a huge sum of money to purchase a super deluxe and gigantic office. If the use of the Exchange Fund by the HKMA is subject to the checks and balances of the Legislative Council, will it act like the Office of The Ombudsman and purchase its own office in a prudent, responsible and careful manner?

Madam President, in fact the problems found in the operation of these public bodies can be attributed to two causes. First, there is a lack of a sound system of checks and balances. As for this lack of a sound system of checks and balance, there are two points related to it. First, the Government relies on the appointment of some officials to the board of directors to exercise the monitoring function. However, these officials have to face two problems. First, very often the Policy Secretaries or heads of departments are appointed to the board of directors of these organizations. We should not forget that the Policy

Secretaries have to be responsible for the formulation of policies on a macro scale in their respective Policy Bureaux, how then can they find the time and energy to act as the directors of these organizations in their personal capacity and to play the monitoring role? Besides, when these ex-officio members are appointed to these organizations, will they act in their capacity as government officials or in their own capacity? Will they accord a higher priority to public interest or to commercial interest? What are they going to do when there is a conflict of these two interests?

As to the question of non-official members or non-executive directors, there are also some problems. We can see that some members of the board of directors will obtain some contracts in a direct or indirect manner from the organization in which they are serving. Sometimes we would ask, is the system of declaration of interest in these organizations sound? A more important thing is that the attendance rate of many non-executive directors in the board meetings is low. From the figures which have just been given to us by the Government, it can be seen that the attendance rate of many non-executive directors is indeed very low. Are they really working for these organizations wholeheartedly and playing the checking role? What is more worrying is that whenever the issue of pay is raised, these non-executive directors seem to be very willing to accept proposals very readily and accede to the demands from some senior executives on salary and other rewards.

The second problem is that these organizations often say that they are operating according to commercial principles. But they are in fact using public money. They enjoy a lot of statutory powers. Then what in fact are these organizations? They have a very odd nature, they are not public organizations, nor are they private organizations. A local newspaper, *Ming Pao Daily*, once printed an editorial which makes an interesting analogy, that they are like bats. That is to say, they will say that they are animals when people say they are birds; and when they are regarded as animals and sanction is to be imposed on them, they will say that they are birds. So often when they are to determine some criteria for wages and other fringe benefits, they will invoke commercial principles and say that they will peg with the prevailing market rates. So many of these senior executives are getting very high salaries. For example, the Chief Executive of the HKMA gets a salary which is several times more than that of the Financial Secretary. The salary of the Chairman of the KCRC is two or three times more than that of the Secretary for Transport. If the public demands that these organizations should do something to tide over the difficult times

together with the people and ask them if the fares they charge can be lowered under some conditions or if the salaries of the senior executives can be reduced, then they will say that they have a very good mechanism in place. Since they say they are public bodies with a well-established system, they will use this as an excuse to refuse to shoulder some of the rights and obligations which the people think they should shoulder.

Madam President, these public bodies often claim that since they are operating according to commercial principles, it would be very difficult to find people of a high calibre and so they need to use high salaries to attract capable persons to fill some senior positions. But the fact is, they are public bodies from first to last. They enjoy a franchise or a lot of other statutory powers vested in them by law. Take the Urban Renewal Authority (URA) as an example, it has statutory powers in land resumption. The KCRC gets full backing from the Government, even to the extent that when it is to develop its station superstructures, it will not need to invite tenders, nor does it need to pay any attention to the regulatory bodies. In these respects, how can they claim that they are similar in nature to private sector organizations? These organizations do not even need to struggle to survive in the face of severe competition in the market. They operate under the assistance and protection of the Government. One wonders whether these organizations have any clear-cut performance indicators in place to require senior executives to reach these indicators before reward is made in recognition of their performance. Under what circumstances will senior executives be regarded as not being able to meet the indicators and hence should be sanctioned? All these are not subject to any criteria. Therefore, the use of market principles to determine the salary criteria is totally out of place.

Madam President, the motion moved by me today aims at calling on Honourable colleagues to urge the Government to make a full-scale review of these public bodies and to see, *inter alia*, if the continued appointment of Policy Secretaries or department heads to the managing boards of these bodies is justified. Some people would ask if there are any good recommendations or ways in respect of changing the institutional framework of these organizations. Madam President, that is not an easy question to answer. That will have to depend on the functions of these organizations. If their nature is providing services and they can operate entirely according to commercial principles, then we should change them into private sector organizations as soon as possible. As for other organizations, if their function is chiefly regulatory, then they can adopt

the quasi-public mode. But if there are some considerations preventing them from turning into full public bodies, then they should be put on par with the other bodies in the Civil Service. I fail to see why in these bodies which exercise a lot of regulatory functions, the pay of the senior executives is higher than the Policy Secretaries who are charged with such important tasks. So I would suggest that a review should be made not only of the system of appointing Policy Secretaries into the managing boards, but also of the pay adjustment mechanism.

Now the Chief Executive, Chairman or the Managing Director of the HKMA, the Hospital Authority or the URA have a great difference in their respective remuneration. It may go from \$3 million or \$4 million to \$9 million or even \$10 million. Why does such a great difference exist? What are the reasons for that? We have no idea. In our opinion, there should first be a transparent mechanism for the determination of salary and fringe benefits. Then public opinion can be invited on this. We should bear in mind that the money involved comes from the public coffers and this should never be squandered. We are not targeting at any particular person and say that he does not deserve his salary. In our opinion, persons such as Mr Joseph YAM, Mr YEUNG Kai-yin, and so on, may even fetch a pay two or three times of their present pay in the private sector market. But that is not important. For what we are asking is: Do they deserve to be paid two or three times more than the Principal Secretaries or the other Policy Secretaries, taking into account the duties they discharge in their respective organizations? In addition, is their salary too high when compared with those who hold similar positions in foreign countries?

The last issue we wish to discuss is should the functions and duties of the Audit Commission be extended to cover monitoring these organizations. The HKMA is of course already being monitored by the Audit Commission. But there are other organizations which should be monitored by the Audit Commission as well. The reason is simple enough: they are using public money. That is why they should be subject to full checks and balances. That is a very important point.

Besides, we think the Legislative Council should play more of a monitoring role. The Democratic Party conducted a survey recently on a few subjects. Dr the Honourable YEUNG Sum will report to this Council later on our behalf. What I would like to say now is that 83% of the respondents are of the view that the accountability of these organizations to the Legislative Council

should be enhanced. Therefore, the senior management of these organizations should report regularly to this Council or to answer questions raised by Honourable Members. I think this can enhance their transparency and accountability.

I so submit. I hope Honourable colleagues can lend their support to the motion today.

**Mr Albert HO moved the following motion: (Translation)**

"That this Council urges the Government to expeditiously review the existing mechanisms for adjusting the pay and fringe benefits of senior executives of the Hong Kong Monetary Authority and statutory bodies, including the Kowloon-Canton Railway Corporation, the Mandatory Provident Fund Schemes Authority, the Hong Kong Housing Society, the Urban Renewal Authority and the Airport Authority, and consider introducing the following measures to improve the way in which they use public funds and to enhance their accountability:

- (a) to review the effectiveness of appointing Policy Secretaries to the managing boards of these bodies to play a monitoring role;
- (b) to draw reference from the pay adjustment mechanism of the Civil Service and devise for these bodies a pay adjustment mechanism which is clear, transparent and acceptable to the public;
- (c) to put these bodies under the scrutiny of the Director of Audit so as to enhance their accountability in their operation; and
- (d) to require the senior management of these bodies to regularly report to the Legislative Council."

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

Mr CHEUNG Man-kwong and Mr LAU Kong-wah will each move an amendment to this motion, as printed on the Agenda. The motion and the two amendments will now be debated together in a joint debate.

I now call upon Mr CHEUNG Man-kwong to speak, to be followed by Mr LAU Kong-wah.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, the public bodies and statutory bodies in the Hong Kong Special Administrative Region (SAR) are like independent kingdoms and they are proliferating in great numbers. Despite the fact that the laws governing their operation have been passed in the Legislative Council, the truth is that government monitoring is inadequate only by appointing Policy Secretaries to the managing boards. On top of this, there is no way in which the Legislative Council and the Audit Commission can monitor these bodies. The recent spate of incidents reveals the top management of these public bodies is enjoying excessive salaries and luxurious benefits and that the existing monitoring system is weak and almost non-existent. For this reason, Mr Albert HO of the Democratic Party has moved his motion today. After the motion was proposed, some friends of the Party think that the debate should be more flexible and it should include other public and statutory bodies, instead of just the few organizations mentioned in the motion. That is why I am making a technical amendment on behalf of the Democratic Party. As a matter of principle, I still support the motion moved by Mr Albert HO.

At the same time, I would present some views on behalf of the Democratic Party on the monitoring of the Mandatory Provident Fund Schemes Authority (MPFA). First of all, what I would like to say is that when the MPFA was set up, the problem of a lack of monitoring was exposed. At that time, I did criticize this. I think Members would still recall, Mr Rafael HUI, the former Secretary for Financial Services, was involved in an alleged conflict of interest case where he made a self-engineered transfer to the MPFA to receive an annual salary of some \$4 million, which was a great jump from his then salary of some \$2 million. As we all know, the post of Managing Director of the MPFA was created by Mr Rafael HUI himself when he was the Secretary for Financial Services. Mr HUI was personally involved from the formulation of the relevant legislation to its passage, up to his assuming the office of Managing Director at the MPFA. When there was criticism that the post was tailor-made for him, he retorted by saying that had it been tailor-made, it would not have been so lean than fat. It seems that he had grievances about his transfer and that the MPFA was not a fat post at all. Apart from Mr HUI, many other lucrative posts in the

MPFA are filled by former government officials. As Mr Albert HO has said, the MPFA is another one of these clubs for retired senior government officials.

A recent incident involving the MPFA is the public query of its pay-out of bonuses despite huge losses. On 14 November, the Honourable Kenneth TING raised a question in this Council on why in the year 2000-01 the MPFA still paid out bonuses to its staff worth some \$7 million despite its losses in investment amounting to \$78 million. The Secretary for Financial Services explained that the losses came from the \$5 billion public money injected by the Government in 1999 as a start-up fund for the MPFA. Deducting the operational expenses, the rest of the money was put in the banks and invested in the Tracker Fund. In other words, the \$78 million losses incurred by the MPFA is not the MPF contributions made by the public, but the money of taxpayers. It is the money from the public purse. Would the Administration tell us why were the senior executives of the MPFA paid a bonus to the amount of 8% to 20% of their salary when they had incurred losses to the taxpayers' money? Is the bonus a reward of their investment failure? Of the staff of the MPFA, Mr Rafael HUI was paid the greatest bonus, at 20% of his salary, or \$800,000. It is really a miracle that an organization making losses in an economic downturn can still pay out bonus to its staff. No wonder it has caused a public outcry.

The authorities justified this by saying that the remuneration system of the MPFA had fixed and variable components. The floating part was the bonus. Bonus is paid based on the following considerations: the overall performance of the MPFA, the performance of individual staff members, the amount of capital which can be used to pay for the floating remuneration, and the market trends and practice of other financial regulatory bodies for the particular year in question. These four factors seem to be quite reasonable, however, it seems that the board of directors has not considered the most important factor, that is, the performance of the organization itself. Given the losses in operation, is there any reasonable ground to pay out bonuses? Besides, the performance in investment is certainly part of the overall performance. If there are losses in investment, it is like failing in the examinations. It is unthinkable when such staff are not punished but rewarded instead. If the MPFA can pay out bonuses in the face of losses, then will this mean the board of directors will pay out huge bonuses and red packets when it makes profits?

The composition of the board of directors which is responsible for supervising the MPFA includes representatives from the Government, such as the Secretary for Education and Manpower and the Secretary for Financial Services. Have they carried out their monitoring work effectively? Have they reminded other board members that as this is a time of economic hardship and so it is not the right time to pay out bonuses? At the meeting of the board of directors in June when the issue of bonus was discussed, the two Policy Secretaries should be well aware that the unemployment rate for the second quarter of 2001 had reached 4.5% and that there were lots of incidents of pay cuts and lay-offs. So when the board of directors paid out the bonuses, did the board members consider the general economic situation of Hong Kong? When the bonuses were paid out at the end of September, did the board members take into account the fact that the unemployment rate had reached 5.3% and how the public would react and think, and that the people were unhappy?

According to the Government's response to Mr Kenneth TING, "the variable pay to be granted to MPFA staff for each year is approved by the MPFA Management Board. The budget for the variable pay for all MPFA staff in total for a particular year is approved by the Financial Secretary in the context of the overall budget for that year." May I ask the Financial Secretary, as the goalkeeper who guards the pay adjustment mechanism of the MPFA, has he played his monitoring part well? I think it is precisely because the Financial Secretary has not kept his goal well that this absurd bonus affair has happened.

Madam President, the case of the MPFA serves to illustrate the gross inadequacy of the monitoring mechanisms in respect of public and statutory bodies. When the MPFA formulates pay standards and fringe benefits systems, it prefers to invoke commercial principles as some sort of a shelter. But when the MPFA is incurring losses, it will deviate from commercial principles and pay out bonuses. Such organizations are therefore exercising double standards and are making all kinds of changes to reap the greatest gains. I hope the Government will step up its monitoring of public bodies and statutory bodies like the MPFA and to put these bodies under the scrutiny of the Director of Audit and the direct monitoring of the Legislative Council. With these remarks, I propose my amendment. Thank you, Madam President.

**MR LAU KONG-WAH** (in Cantonese): Madam President, some people say, "It is hard to know people's hidden intention"; some people say, "To give birth to children is easy but educate them is difficult." If the children grow up to be very sensible, independent and self-reliant; they neither live on the loose outside, nor squander money wantonly, I think their parents will definitely feel at ease and satisfied. On the contrary, if the children do not "behave themselves", talk back to their parents and offend them with words, or decline to reveal anything when their parents try to give them some advice, I think their parents must feel greatly hurt.

THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair.

The relationship between taxpayers and public bodies, I believe, is also like this. Public sentiment is currently very dissatisfied with the performance of these bodies. Today's motion was induced by the high pay of top executives and extravagant spending of the KCRC. Certainly, the Chairman of KCRC did respond. However, he did not give reasons in detail in his answer. Instead, he simply gave a brief account to the media in a few words. In fact, that could not be considered as being accountable to the public.

Certainly, two relevant Policy Secretaries, that is, the Secretary for Transport and the Secretary for the Treasury are also serving members of the managing board of the KCRC. The former certainly has to monitor the transport policies of the KCRC, whereas the latter must monitor its accounts and financial operation.

When I asked the Secretary for Transport whether he considered the existing level of remuneration of the KCRC reasonable, his answer at that time in this Council was that since it was collective decision by the managing board, he was not in a position to comment. Despite the fact that the Secretary for the Treasury is also one of the three important members of the Audit Committee of the KCRC managing board, neither could she give a more detailed account to the Legislative Council. Whether they have actually monitored the managing board, we in fact could hardly tell. Therefore, Madam Deputy, the current situation is that we feel the public is gravely concerned about the financial operation of the KCRC, so we made enquiries with it. However, they only "acted as if they were correct and kept arguing". When we enquired the government officials,

they only prevaricated. We, as Members of the Legislative Council, despite our wish to monitor these corporations, appear to be "rats trying to pull a tortoise, not knowing where to start".

Since presently there is no monitoring to speak of, the KCRC is not only a haven for retired senior government officials, but also a place for happy spending. Who should monitor this? The incident of paying out "bonuses" by the MPFA also makes people feel worried. The Fund has not only performed unsatisfactorily, but also suffered an enormous loss. However, the MPFA could still pay out handsome "bonuses" and a reward of \$7 million was distributed even though it had lost \$70 million of funds. What is the logic for this? Insofar as business operation is concerned, top executives will definitely take the lead to cut salaries and benefits if the economy is poor or the performance of the corporation is poor. However, in the face of an economic recession, the MPFA could increase benefits despite poor performance. It really beats me. When the economy prospers, the relevant bodies have to peg with private corporations; but when the economy is in the doldrums, they also have to delink with the trend of private corporations. I really cannot understand why. The current situation is uncontrollable as a wild horse without bridle, and this will stir up public resentment pent-up in people's spleen. Therefore, I advise the top executives of the MPFA to keep tabs on public sentiment apart from watching the trend of "bonus".

A recent example is in connection with the monitoring of the Hospital Authority (HA). In a report published by the Audit Commission recently, it was found that when the two new hospitals — North District Hospital and Tseung Kwan O Hospital were being constructed, not a list had been submitted to the Health and Welfare Bureau at all in respect of a \$900 million funding application relating to furnishings. The Bureau not only failed to ask what the HA had bought, but also approved the funding in the total absence of a list. Was it trifling under such circumstances? Certainly, we will continue with the scrutiny in the Public Accounts Committee and draw our conclusion. The Finance Bureau has also suggested that when purchasing some massive facilities in future, the relevant institution must submit a list. Anyhow, the report has exactly disclosed that such bureaux as the Health and Welfare Bureau had not discharged their duties properly in the past in failing to check the list at all at the outset. This is a classic example showing that relevant Policy Secretaries have failed to

monitor effectively, and we have proposed the amendment exactly because of this.

In point (a) of the motion, Mr Albert HO proposes to review the effectiveness of appointing Policy Secretaries to the managing boards of these bodies to play a monitoring role. Madam Deputy, we have already reviewed this and we opined that all Policy Secretaries appointed to these managing boards must monitor the bodies concerned. Apart from being members of the managing boards, they are definitely playing an additional role of monitoring these managing boards on behalf of taxpayers. Therefore, we have proposed very clearly a specific direction to ensure that Policy Secretaries appointed to be serving members of the managing boards of those bodies discharge their monitoring duties effectively and are accountable to the Legislative Council. This is very important. If everything is not accountable to the Legislative Council on excuses of a collective decision and business operation, it will turn out to have no monitoring at all.

Mr Albert HO proposes in point (b) that we must draw reference from the pay adjustment mechanism of the Civil Service and devise for these bodies a pay adjustment mechanism which is clear, specific, transparent and acceptable to the public. We fully support the latter part, and we also opine that this mechanism must be devised. However, we have reservations about whether reference should be drawn from the pay adjustment mechanism of the Civil Service. The reason is that the pay adjustment mechanism of the Civil Service has also been subject to strong criticisms by colleagues of this Council recently because it should also be reviewed by the Government for its loopholes and the lack of flexibility. Therefore, we have deleted the part on drawing reference from the pay adjustment mechanism of the Civil Service and kept the latter part of point (b).

My last amendment is to point (d). Mr Albert HO originally proposed that the senior management of those bodies be required to regularly report to the Legislative Council. There is nothing wrong with this initially. In fact, the Secretary could later on respond to us that they have been doing this. Therefore, we added one more sentence: "provide that the committees and subcommittees of the Legislative Council may require the chairpersons and chief executive officers of these bodies to attend their meetings and answer questions from Members". Starting from the Urban Renewal Authority Bill and the Kowloon-Canton Railway Corporation (Amendment) Bill 2001 which is to be debated next week,

these wordings will thus be added. Therefore, I think we can make the same requests to these bodies in future. We will have some reservations when we vote. On the other hand, we also hope very much that other Members can fully support our amendment after listening to our explanation. In this connection, we will abstain from voting on part (a) of the motion. Thank you, Madam Deputy.

**MR ERIC LI** (in Cantonese): Madam Deputy, the motion serves a positive purpose, for it can make the public see clearly that any statutory body which uses public funds should be and is subject to monitoring by the legislature today.

As the Chairman of the Public Accounts Committee (PAC), I have expressed my concern for the topic many times. Today I would like to talk about the sprawling growth in the institutional framework, the effectiveness of appointing Policy Secretaries to the managing boards of these bodies to play a monitoring role and also on the putting of these bodies under the scrutiny of the Director of Audit so as to monitor the effectiveness of these bodies.

First of all, on the sprawling growth of the institutional framework. In Report No. 28 submitted by the PAC on 11 June 1997, I have said that the Government has in recent years launched vigorously a policy to set up public bodies to take charge of work in certain areas. The rationale often offered is that such kind of government subvented organizations would be subject to less restrictions from the bureaucratic framework and hence would be more efficient and effective in their provision of services to the public. Therefore, the number and types of government subvented organizations has increased greatly in a short span of time. Despite the fact that the objective of improving the delivery of public services has in many cases been reached, the work in monitoring these bodies is more important. We must stay on top alert at all times to ensure that the huge amount of public funds managed by these government subvented organizations is used in the right manner.

The Chief Secretary for Administration agreed to this view on 10 September 1997 and she was of the view that the terms and conditions offered by these bodies should be in line with prevailing market trends. In addition, the Chief Secretary for Administration raised another important point and that was: the principle adopted by the Government when making subsidies to these bodies is that the packages of remuneration offered by these bodies to their staff should not be better than those received by civil servants of comparable grades.

These principles are in force even to this day. However, it is apparent that in some of the statutory bodies mentioned in this motion, the remuneration of some of their senior executives is even more than that of the Chief Secretary for Administration and the Financial Secretary. I fail to understand whether a transfer from the Civil Service to these statutory bodies is a kind of promotion and whether a same person who has transferred from the Civil Service to a statutory body can make achievements even more than their previous superiors. I do not wish to draw any conclusion on this. But some of these bodies do not have to follow these well-established principles for subvented organizations and it can even be said that they even have the kind of flexibility found in business organizations. Can this flexibility allow these statutory bodies to adopt the practice of picking people of their choice from the ranks of the Civil Service by offering them salaries at a few times more than those received by civil servants? Is the money spent on good value? I think that is unimaginable and questionable.

As to the question of the effectiveness of appointing Policy Secretaries to the managing boards of these bodies to play the monitoring role, in the report submitted by me on 12 April 2000, I mentioned the management initiatives adopted by the Vocational Training Council. The PAC was of the view that the Administration should arrange to have one of the appointed members of the managing board to pay attention to the regulations regarding subventions and to see to it that public funds are used properly. The Government certainly agreed that it would consider doing so. In the course of deliberating on the legislation concerning the KCRC, I also mentioned this point. Thereafter in the radio programme "Letters to Hong Kong" I also pointed out clearly that the Policy Secretaries and the independent non-executive directors should not only do their part to ensure that the managing board would carry out government policies, but that consideration should also be made from the perspective of sound corporate governance to provide comprehensive and adequate professional support, especially in financial management and business administration. That would enable the Policy Secretaries to play their role in the managing boards more in keeping with market needs and to play a better monitoring role.

The reason why I put forward these needs is because statutory bodies like the KCRC, the MTR Corporation Limited (MTRCL), the Airport Authority, and so on, have a market value in the region of hundreds of billion dollars and they can be said to be the most valuable assets of Hong Kong people. How are we to

keep the value of these assets and even make some growth possible? That would have to depend on how the Hong Kong Government in its role as the major shareholder, or even the holding company, manages these statutory bodies from a professional and business perspective. The role played by the Policy Secretaries is of enormous import and essential.

As to the part of the motion on putting these bodies under the scrutiny of the Director of Audit, the wording used is "so as to enhance their accountability in their operation". I would like to point out in the first place that in the relevant legislation, that is, section 15(a) of the Audit Ordinance, it is stipulated that the Chief Executive has the power to appoint the Director of Audit to audit any organization. Many of the statutes governing the statutory bodies have adequate matching provisions in this regard. Therefore, the Director of Audit has been vested with powers under the existing legal framework to carry out his duties and to exercise his powers.

When deliberating on the Airport Authority Ordinance, some Honourable Members even expressed the wish that the Audit Commission could be changed into an external auditor. At that time I expressed some concerns and I raised the point that these corporations operated according to commercial principles and in terms of financial management there was a need for a government auditor to handle such matters. And in the accounting profession, there are already some very experienced accountants who are capable of making fair and impartial audits on companies. What I am worried all the more is that if the Director of Audit is appointed as the auditor, would he be subject to the regulation of the Professional Accountants Ordinance? If he is found to be negligent or at fault, will he be subject to any regulation? Or would there be any possibility of civil claims? All these are unknowns. In my opinion then, the Director of Audit cannot be appointed as an auditor.

Recently, in the programme "Letters to Hong Kong", I raised a new idea and that was the result of my experience as the Chairman of the PAC for almost six years and as an independent director of many companies. I think as the major shareholder, the Government may consider using the Director of Audit to carry out internal auditing work, instead of acting as an auditor. He would be able to carry out value-for-money auditing in three to five years and to monitor the expenditure. Some of the statutory bodies like the HKMA and the MPFA have already come under the scrutiny of the Audit Commission, but some others

like the KCRC and the MTRCL, and so on, have not. I hope these bodies would consider inviting the Director of Audit to make a value-for-money audit at their own initiative. This would serve to show that there is nothing wrong with their management and that they have nothing to hide. Thank you, Madam Deputy.

**MISS EMILY LAU** (in Cantonese): Madam Deputy, I speak in support of the motion moved by Mr Albert HO and the amendment proposed by Mr CHEUNG Man-kwong.

Madam Deputy, I notice that in Mr CHEUNG's amendment, some corporations such as the KCRC and the MPFA, and so on, have been deleted. The purpose is to give Honourable Members more room for discussion and to arrive at a consensus and gain support from Members so that the motion and the amendment will not fall flat. I would certainly give my full support to this, for I am personally trying hard at making the eight political parties agree to some issues. I think that is what the public would like to see. For if not, the motion would certainly fall flat and that is too bad.

However, Mr CHEUNG's amendment retains the HKMA and I believe a consensus has been reached on that. There is no need to delete the HKMA from the motion. Honourable colleagues in the Council would agree to that. I would like to spend some time to talk about the HKMA. It is because in recent years I have found time to monitor the HKMA. Madam Deputy, why is the HKMA so important? Some time ago, our Exchange Fund once recorded an asset value of more than \$1,000 billion. Unfortunately, this has dropped to less than \$1,000 billion and is still falling. Whether those who are charged with the task of overseeing this Fund should be held responsible is a worthy question of discussion by Members.

The HKMA is vested with very great powers, including powers that it may exercise to supervise the banks and to make our financial system stable. But who is to monitor the HKMA? Madam Deputy, we have in fact talked about this issue many times. But I would like to raise it up again for discussion. The Government would certainly tell us that an advisory body is responsible for monitoring the HKMA. But can this advisory body really play the role of monitoring the HKMA? The advisory body has 10 members. The Financial

Secretary serves as the chairman. Five of the members come from the banking sector, including representatives from the HSBC, the Standard Chartered Bank, the Bank of East Asia, the Bank of China and the First Chekiang Bank. We have always asked this question: These banks are under the regulation of the HKMA and they are now playing a monitoring role on the HKMA, would there be a conflict of interests? If these banks are afraid of being picked on by the HKMA, then would they have the courage to monitor the HKMA, even to the extent of monitoring the salary of HKMA staff? So for this reason we have raised our concern in the relevant panel of the Council on a number of occasions.

Afterwards, the Chief Executive of the HKMA, Mr Joseph YAM raised the idea of a governing council to the media. He was also of the view that the banking sector should not perform any monitoring role on the HKMA. He also thought that Members of the Legislative Council should not monitor the HKMA and this caused some bad feelings among some Members. Madam Deputy, I know why Honourable Members reacted so strongly to that. It is because Members of this Council, especially those 24 Members returned by direct elections, are representatives of the people of Hong Kong. Why can they not monitor the HKMA? However, the issue was shelved because of the many disputes caused.

But that does not mean that the issue is resolved. Who shall take up the role of monitoring the HKMA? Should some representatives of the people be made to assume this role? The issues of the transparency and accountability of the HKMA remain totally unresolved. That is why I think we should examine the HKMA with a magnifier. For our part, we have been following up the matter in the Panel on Financial Affairs.

The most obvious manifestation of the lack of monitoring over the HKMA is its squandering of public money. A few Members have mentioned earlier the HKMA's plan to purchase its own office. Madam Deputy, the money spent is \$3.7 billion. Is there a need to use \$3.7 billion at this time to purchase an office with an area of 340 000 sq ft, that is, two floors in addition to 12 floors? The present office of the HKMA has an area of 200 000 sq ft, and when an extra 140 000 sq ft is purchased, that would mean an additional 70% of the total office area. The Legislative Council began to raise queries this March. But at the end of April, when Mr Donald TSANG was about to be promoted, he signed the purchase agreement. That prevented us from raising objections. I have asked

the incumbent Financial Secretary a number of times about that and his reply was no objections could be raised now because an agreement had been signed.

I am not very familiar with the property market, but according to some Honourable colleagues, if the property market keeps on its downward trend, there would be a saving of \$1 billion even if property of the same nature is to be bought. May be a sum as great as \$1 billion cannot be saved, but Members all doubt whether such a huge amount of money should be used to purchase an office. Besides, what power has the HKMA invoked to do this? Madam Deputy, the HKMA said at that time that it had to use the Exchange Fund and it was acting under section 3(1) of the Exchange Fund Ordinance. The principal objective of the Exchange Fund is to make the Hong Kong dollar stable. I fail to see how the purchase of a 340 000 sq ft super deluxe office will in any way help to make the Hong Kong dollar stable. We therefore raised our query and the HKMA told us that it was invoking section 6A of the Exchange Fund Ordinance, for that provision was on other staff expenses. Even the Legal Adviser of this Council queried about this reply given by the HKMA.

Then the case made its way to the Secretary for Justice and the Secretary for Justice also found it hard to accept. But as she said, nothing could be done about it and she could only let the HKMA have its own way. Madam Deputy, when some people raised the challenge again later, the HKMA invoked another provision, and that is, section 6B. The provision states that the Financial Secretary may seek approval from the Chief Executive. Why was the matter handled in such a frivolous manner? Now the case has not come to a close. The Panel on Financial Affairs is still discussing the matter, and I think the Chief Executive, the Financial Secretary and the Secretary for Justice all owe the public an explanation. The Office of The Ombudsman spent some \$100 million to purchase an office and it said that it was using the money as if it were taken from its own pockets. So it compared the prices of all the properties available on the market and bought the one which was the cheapest. Now the question is some people are not treating the money as their own. \$3.7 billion is no small sum. In the present economic downturn, that the HKMA is still buying such a super deluxe office may unlikely be acceptable to the public.

In addition, on the issue of the remuneration of the staff of the HKMA, it is also a question of money. Madam Deputy, the present annual remuneration of Mr Joseph YAM is \$9 million to \$9.5 million. I agree with Mr Albert HO

who asked why the salary of these officials was more than that of the Policy Secretaries. I hope therefore that a mechanism can be devised to determine the remuneration of the staff of all public bodies, not just the HKMA, and whether their pay adjustment is considered fair by the public. We can never let these statutory bodies stay on being free from any control and regulation and become the clubs for retired senior officials.

I so submit.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam Deputy, in order to cope with the various social needs and the development of the economy, the Government has established in recent years quite a number of statutory public bodies which are independent of the Government. The original objective of the Government in setting up statutory bodies to implement policies and provide services to the public is to absorb the strong points of enterprises in the private sector, with a view to making more effective use of its resources and enhancing the quality of services. At present, some of the statutory public bodies set up by the Government are financed by public money and the pay scale of their employees is basically linked with that of the Civil Service. For the year 2001-02, the Government has granted a total of \$32.2 billion as subsidies for a number of public bodies outside the government structure, including the Hospital Authority, the Vocational Training Council, and so on. As for other public organizations, such as the KCRC, the Airport Authority (HA), the MPFA, and so on, they operate in accordance with commercial principles and have their own sources of income. The remuneration of the employees working in these organizations is determined by their respective managing boards in the light of the market situation. The problem remains that payroll expenses account for a large proportion of these organizations' operating costs, regardless of whether they are publicly-funded or financially independent organizations. Besides, the costs involved here are actually the people's money. At the present moment when the budget deficit continues to stand at a high level, the economy remains in the doldrums and the people are in hard times, it is therefore natural that members of society expect the various public bodies to reduce their operating costs to help alleviate the burden on the public. The Hong Kong Progressive Alliance (HKPA) all along holds that the Government has to conduct a comprehensive review of the staff establishment and pay and benefit structure of

public bodies, with a view to streamlining them as far as practicable and keeping them genuinely in line with the market situation.

According to the Government, the pay level of the senior executives of public bodies is determined in the light of the management structure of the individual bodies concerned, the importance of the responsibilities involved, and the relevant professional knowledge and experience required; and is in line with that of the market. However, one fact we must not overlook is that the operating environment and staff remuneration packages of these public bodies may not have really undergone any market competition process. Let us take the KCRC and the HA as an example. Actually, the operation of these public bodies is franchised in some measure; other parties just can hardly enter the market to compete with them. So, they have in effect monopolized the market. Given that the operating environment is relatively stable, the performance of these public bodies will to a certain extent be assured. In other words, the chances for the senior management of these bodies to be held responsible for poor performance will be minimized significantly, meaning that the market can play a very limited role in effect. As regards the HKMA and the MPFA, since they are authorities provided by law, there just cannot be any form of competition at all. In a nutshell, without any profit-related pressure, the senior executives of these public bodies are enjoying far better career stability than their counterparts in the private sector, who have to constantly face all kinds of challenges in the market. Moreover, given the present economic recession, even private enterprises have reduced the pay and various benefits of their employees. That being the case, for what reasons can the public bodies be an exception? In the private sector, bonuses are determined in the light of the performance of the firms concerned. But then, the senior management of certain individual public bodies which have performed unsatisfactorily or even suffered losses can still enjoy bonuses. Is it not unreasonable? I just hope the Government will square up to these problems instead of using market operation as its excuse.

Madam Deputy, like enterprises in the private sector, these public bodies have in place managing boards (or governing councils) to monitor their operation and to safeguard public interest. Even though the members on these managing boards come from the different sectors of society, they are not full-time directors. Given that these members are all busy with their own businesses, and that only a

few board meetings are held annually, it is just impossible for these members to have any specific knowledge about the operation of the public bodies concerned. Naturally, the monitoring role they can play will be significantly reduced. As ex-officio members of these managing boards or governing councils, the Policy Secretaries concerned should indeed do a good job in monitoring the operation of their respective bodies. Regrettably, members of the public are doubtful about the effectiveness of their monitoring; some even considered that these public bodies have developed into independent kingdoms. The Government should therefore look into ways to ensure that the managing boards of these public bodies can really give play to their role, with a view to strengthening the internal checks and balances of these bodies to safeguard public interest. Apart from that, the Government should also look into ways to practically enhance the public accountability of these bodies. The HKPA considers that as the representative of public opinions, the Legislative Council should be able to play an important role in this respect. Further still, bearing in mind that the Audit Commission has all along been doing a good job in monitoring the expenditures and cost-effectiveness of the Government and the public sector, the Government should allocate more resources to the Audit Commission to enable it to enhance its role in vetting the performance of the public sector, thereby ensuring that the public money will not be wasted.

Madam Deputy, I so submit.

**MISS CHOY SO-YUK** (in Cantonese): Madam Deputy, news has recently been spread that the senior executives of public bodies have very staggering pay, causing a public outcry. As a result, people have been continuously asking the Government to monitor these organizations. The Government insisted in response that public bodies should operate according to market principles and it disagreed that any criterion should be set for the determination of the remuneration of their senior executives. Then, such organizations would be able to flexibly offer more favourable conditions at market levels to attract talents from the business sector to take up appointment. Although it is rational to say so, as public bodies are financed or wholly owned by the Government, their daily expenditures are paid from the public coffers. Under the social atmosphere that emphasizes value enhancement and downsizing, it is justified for people to be concerned about whether the expenditures are properly spent and whether they are value for money.

Madam Deputy, growing discontent is definitely not a good thing for the SAR Government. To address the public's worries and prevent public bodies from making decisions on pay adjustment against the popular will, which would damage the reputation of public bodies as a whole, I fully support strengthening the monitoring mechanism for these organizations. At present, the transparency of policies is emphasized and government officials have to attend Council meetings very often to brief the Council on the policy objectives of the Government. Therefore, there is no reason why senior executives of public bodies can stay clear of this and continue to adopt the existing practice of not answering questions asked by Members direct. Immediately extending the purview of the Director of Audit to cover public bodies is also an effective improvement measure that is widely accepted. A checks and balances mechanism should also be introduced to such bodies to avoid giving senior executives a chance to dominate the whole situation and act arbitrarily.

The public bodies can certainly make high-sounding responses in regard to the pay adjustment of their senior executives. They can say that they would make reference to some objective criteria, for example, such quantifiable indicators as the quality of services provided and the extent of customer satisfaction, when adjusting the pay of managerial personnel. In other words, when the overall performance of the bodies is good, senior managerial personnel would get higher pay; conversely, their income would become less. On the surface, it seems that the implementation of the system can achieve value for money and avoid the penetration of subjective factors. But recent reports have fully reflected that the mechanism has not been effectively implemented.

More important, even if the mechanism can really perform the desired functions, it is still impossible to make up for quite a few loopholes in the system. The most obvious example is that, under the existing mechanism, it is impossible to prevent senior civil servants in office from paving a way out for themselves by means of their influence, so that on retirement they can smoothly take up another appointment or steadily take up a senior position in public bodies and continue to live a life of ease and leisure. They could take up a high position and receive handsome pay that may be even more than what they used to receive.

It is a pressing task for public bodies to formulate clear, explicit and transparent pay adjustment mechanisms and monitoring mechanisms that are accepted by the public.

Madam Deputy, though it is inevitable to improve the existing mechanism, we must act prudently and prevent unrealistically formulating provisions on public organizations. It would be equally bad if they either go too far or not far enough. If so, we would have done something bad with the best of intentions and the proposal would ultimately lead public bodies to another extreme. In the final analysis, public bodies are established outside government departments because these agile and flexible organizations can effectively respond to the ever-changing market environment, determine the pay and fringe benefits of posts on the basis of market levels as well as absorb high quality managerial talents. Therefore, we cannot set up defences or formulate restrictions and both complicated and rigid provisions because of the problems that have emerged. Otherwise, a public body would only degenerate into another government department and it would ultimately bring about a situation in which either devolving power to a lower level or centralizing power would be detrimental. We would then sap the most important market vitality of public bodies.

With these remarks, Madam Deputy, I support Mr LAU Kong-wah's amendment.

**DR YEUNG SUM** (in Cantonese): Madam Deputy, the statutory public bodies in Hong Kong, such as the HKMA, the KCRC, the Housing Society (HS), and so on, are basically gigantic bodies not subject to any form of monitoring. Besides, the enormously huge salaries and fringe benefits enjoyed by their senior executives all along have also aroused great dissatisfaction among members of society.

Under the present market trend towards "downsizing" and layoff, the remuneration packages of such publicly-funded bodies as the HKMA, the KCRC, the HS, and so on, have indeed caused considerable controversy among the general public. The Democratic Party therefore conducted a telephone survey between 6 December and 9 December 2001 to find out the people's views on the high pay of the senior executives of these publicly-funded bodies.

This telephone survey successfully interviewed 834 members of the public. With regard to the pay and fringe benefit packages enjoyed by the senior executives of the HS, the KCRC and the HKMA, which range from over \$4.5

million to over \$9 million annually, almost 76% of the people interviewed found such pay and fringe benefit levels too high, while only 4.2% of the interviewees considered the levels reasonable and another 1.8% considered them not high.

As regards the question of whether or not appointing government officials to the managing boards of these bodies can effectively monitor the pay and fringe benefits of their senior executives, only 25% of the 834 people interviewed believed so; however, almost 47% of the interviewees considered the arrangement not effective while another 28% said they were not sure or had no comment.

The findings of the survey also indicate that the vast majority (over 82%) of the people interviewed agreed that the HKMA as well as other statutory bodies should enhance the transparency of their mechanisms for adjusting the pay and fringe benefits of their senior executives, those who disagreed and who were not sure or had no comment accounted for only 4.9% and 13% of the interviewees respectively.

The public have divergent views on the question of whether or not the Audit Commission can effectively and impartially monitor these bodies' mechanisms for adjusting the pay and benefits of their senior executives. Although 37% of the people interviewed believed so, those who held the opposite opinion also amounted to almost 37%, while the remaining 26% said they were not sure or had no comment.

Over 83% of the people interviewed supported that the senior management of these public bodies should regularly report to the Legislative Council the adjustments made to the pay and benefits of their respective senior executives and to answer questions from Members. As for those who held the opposite opinion and those who were not sure or had no comment, they accounted for only 5.4% and 12% of the interviewees respectively.

To sum up, Madam Deputy, first of all, the public generally believes that the pay of the senior executives of the HKMA and other statutory public bodies is set at too high a level. This is a very important point. Secondly, the public also considers that the Policy Secretaries appointed by the Government to the managing boards of these bodies have failed to play their monitoring role. The attendance rate of certain Policy Secretaries at their respective boards is very low.

Thirdly, the majority of the people interviewed also agreed that the senior management of these public bodies should regularly report to the Legislative Council the adjustments made to the pay and benefits of their respective senior executives and to answer questions from Members.

The Democratic Party holds that the Government should conduct a comprehensive review of the pay adjustment mechanisms of the various regulatory and statutory bodies, and, at the same time, strengthen the power of this Council to monitor these bodies. Madam Deputy, I so submit.

**MR ABRAHAM SHEK:** Madam Deputy, some members of our community consider that the pay packages enjoyed by the senior executives of statutory bodies are far too generous and not in the best interests of the public, particularly in the present economic hard time. They wonder why there is a substantial difference between the salaries of top executives of these public bodies and those of the Government. Both the public bodies and the Government serve the public. Why should there be such a difference?

The Government is adamant that these public organizations should remain independent in making their pay adjustments and not be subject to any external interventions. The Chief Secretary has clearly said that "it is neither desirable nor practicable to put in place a set of uniform criteria for the remuneration of senior management staff in these organizations".

One strong argument against government intervention is that public bodies' remuneration should be in line with the respective markets in which these organizations compete for human resources, or such organizations will not be able to attract and retain staff with the appropriate calibre, experience and expertise. These organizations are entitled to such independence as they are separated from the Government and they run on commercial principles.

However, while private enterprises have a flexible pay adjustment mechanism which readily responds to ups and downs in the market, such flexibility is absent in the public organizations' pay adjustment mechanism. The difference is obvious when the economy is in the downturn. In many private enterprises, remuneration is linked to performance and paid in the form of salary and company shares, which are subject to market fluctuations. Remuneration in public organizations, in contrast, remains stable as there is no

effective mechanism for downward adjustments. Such inflexibility is not in line with the public organizations' objective to stay cost-effective and be competitive in the market.

Besides, the pressure to compete for talents with private enterprises is substantially relieved by a steady supply of good and veteran ex-government officials over the years to these types of organizations. To name a few, Mr YEUNG Kai-yin, Mr James BLAKE, Mr Rafael HUI, Mr Billy LAM and others.

Madam Deputy, I believe that during the present economic downturn, there is plenty of room for downward adjustment of the remuneration of Chief Executive Officers in statutory bodies. The presence of such a system is important in bringing these senior executives' pay level in line with the market trend. Also, it is time for statutory bodies to review the pay scale for senior executives and consider whether they should draw reference from the pay mechanism of civil servants.

Another focus of today's motion is how to enhance the transparency and accountability of statutory organizations. Some of our colleagues have raised concern over the effectiveness of appointing Policy Secretaries or directors to the managing boards of statutory bodies. I believe that it is important to have relevant senior government officials sitting in the managing boards. They play a monitoring role and act as a bridge of communication to facilitate useful exchange of views between the Government and these organizations. They also ensure that major policies of these organizations are in line with government policies and public interest. Their continuous presence in the managing boards is necessary and beneficial to the public.

To improve the quality of supervision, the relevant Policy Secretaries should be more alert to board proposals which may be potentially controversial or are of great importance to public interest. The Secretaries may consider giving special briefings to this Council and collecting public opinions in the process of policy formation.

Regarding item (c) of the Honourable Albert HO's motion on the role of the Director of Audit, I take a different view. I am of the opinion that the Director of Audit, as the government's auditor, should not act as the auditor for these organizations. His involvement would affect the international credit

ratings of these organizations and would result in high borrowing costs. However, I agree with the Honourable Eric LI's proposal that the Director of Audit could carry out "value for money audits" on behalf of the Government.

Under government encouragement, these organizations have already adopted various measures to enhance their transparency and accountability. These measures include holding press conferences, producing regular reports on their work, making relevant documents and papers of the meetings available for public inspection, uploading onto the Internet the relevant information, giving briefings to this Council and opening up meetings to the public. All these are good measures and on this basis, public organizations should continue to enhance their accountability.

The public is increasingly demanding greater accountability and transparency of the statutory bodies. These bodies should ensure that every dollar they spend is both justifiable and necessary.

Thank you.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, in the face of the present economic slump, many firms and companies have sought to downsize through layoffs and wage cuts, even the government departments which used to react much slower than the private sector have also been actively implementing the Enhanced Productivity Programme to cut costs. Nevertheless, the senior executives of certain public organizations or statutory bodies are enjoying the exclusive privilege of huge salaries and extraordinary benefits completely out of line with the market situation or reality. According to government data, the expenditure on the remuneration of the 91 senior executives of the five major public organizations in Hong Kong over the past year has amounted to \$300 million, or an average of \$3.23 million on each of them. In this connection, the total salary expenditure on the senior executives of the Kowloon-Canton Railway Corporation (KCRC) has increased significantly by seven times over the past five years and ranked first all the other public organizations or statutory bodies. The number of its senior executives has increased from five to last year's 10, representing a 100% increase; and the average annual salary for these senior executives stands highly at \$3.4 million. As regards the Hong Kong Monetary Authority (HKMA), its Chief Executive, Mr Joseph YAM, earns a huge annual

remuneration of over \$9 million and tops his counterparts in all the other public organizations and statutory bodies. What is more, despite the fact that Mr YAM's responsibility and influence are way below that of United States Federal Reserve Board Chairman, Mr Alan GREENSPAN, his annual remuneration is way above that of Mr GREENSPAN, which amounts to slightly more than \$1 million when exchanged into Hong Kong currency. How exactly is Mr YAM's salary determined? The general explanation is that his salary is determined in the light of the Exchange Fund assets that he manages. But then, can we really regard him as a fund manager or the Chief Executive Officer of a financial organization in the private sector? The salaries of fund managers are directly linked with their performance, and they will be fired if their performance is not good enough. But is Mr YAM exposed to such a risk? As a matter of fact, members of the public have since a long time been complaining against the excessively high salaries enjoyed by the senior executives of public organizations and statutory bodies. In the past when the economy was blooming, the public could still tolerate that and did not dig into the matter. Now that we are faced with economic hardships, naturally the public will find it hard to tolerate any waste of public money to exist or continue. Hence, there is indeed a need for the Government to review the existing mechanisms for adjusting the pay and fringe benefits of senior executives of the various public organizations and statutory bodies.

The Democratic Alliance for Betterment of Hong Kong (DAB) considers the proposal put forward by Mr Albert HO to urge the various public organizations and statutory bodies to draw reference from the pay adjustment mechanism of the Civil Service not appropriate. Given that the pay adjustment mechanism of the Civil Service cannot keep up with the market reaction and lacks flexibility, it is not suitable for such public organizations and statutory bodies as the KCRC, the Airport Authority, the HKMA, and so on. As these organizations are originally designed to operate in accordance with the commercial principles of the private sector, their pay adjustment mechanism should therefore be in line with the market principles of the private sector. But then, the problem remains that when firms and companies in the private sector give their employees a raise, these organizations will follow suit; yet when the private sector cut wages, they just refuse to do so on the grounds that they have to keep in line with the pay adjustment mechanism of the Civil Service. They will follow the private sector whenever they wish and switch to draw reference from the Civil Service at any time they please. In short, they are changing sides

swiftly to reap the maximum advantages. For this reason, we consider that it does not matter whether or not they draw reference from the private sector to adjust staff salaries; the thrust of the matter lies in value for money and whether or not there is a sound and effective mechanism in place. So long as their pay and fringe benefits adjustment mechanism is clear, transparent and acceptable to the public, it will be fine for these public organizations to operate in accordance with the commercial principles of the private sector.

Madam Deputy, very often the Government will appoint the relevant Policy Secretaries to the managing boards of the various public organizations and statutory bodies to monitor the management of these organizations on its behalf. However, as reflected in past cases when this Council discussed certain relevant issues, the government officials attending the discussions just could not answer the questions raised by us. Moreover, their attendance rates at the relevant board meetings are too low to enable them to discharge their duties. As for other times, they just refused to give us any answer, saying that they could not speak on behalf of the relevant managing boards. Perhaps this is exactly the view of the boards: To avoid responsibilities by way of the rule of collective responsibility. Now that the rule of collective responsibility has become collective irresponsibility, what kind of role is the Government playing? For some statutory bodies like the KCRC, since the same person is appointed as the Chairman of the Board and the Chief Executive, he can do anything as they wish. That is why the KCRC has become an "independent kingdom" and a "club for retired senior government officials", determining the Corporation's senior executives' pay level and raises all on its own. When criticized for spending extravagantly and squandering resources, K.Y. YEUNG even said in response, "Expenses are not to be cut in such piecemeal ways but in large amounts." On the other hand, even though the investments made by the Mandatory Provident Fund Schemes Authority suffer losses amounting to some \$78 million, the Authority is still paying out over \$10 million in bonuses to its employees. How incredible! All these examples have exposed the problem of "no control" over public organizations. Judging from the way the Government expeditiously appointed a person other than the Corporation's Chief Executive as the Chairman of the KCRC, we can see that not enough effort has been made by the Government to monitor the various public organizations and statutory bodies all along. In some cases, the situation has just gone out of hand. At present, as the relevant government officials are unwilling to give an account of the real situation, this Council can hardly know what is happening in these public

organizations and statutory bodies, nor is it possible for the public to effect any monitoring. So, the thrust of the matter now is not reviewing the effectiveness of the mechanism for appointing Policy Secretaries to these organizations. The most important point is that the Policy Secretaries appointed to the managing boards of such organizations must be clearly required to discharge their monitoring duties effectively and be answerable to the Legislative Council for their roles in this respect.

In addition to requiring the relevant Policy Secretaries to account to this Council the real situation, the DAB also considers it necessary for the Government to specifically provide that the committees and subcommittees of the Legislative Council may require the chairpersons and chief executive officers of these organizations to attend their meetings and answer questions from Members, as in the case of the Urban Renewal Authority Ordinance. It is of the utmost importance to enhance the monitoring of public organizations and statutory bodies, for they are funded with public money. Unlike other organizations in the private sector, they are protected by government policies and preferential treatments. As such, it is both necessary and reasonable for them to be monitored by the public and be accountable to the public.

With these remarks, I support the amendment proposed by Mr LAU Kong-wah.

Thank you, Madam Deputy.

**MR MA FUNG-KWOK** (in Cantonese): Madam Deputy, requirements on the pay and fringe benefits of publicly-funded organizations (that is, voluntary organizations, primary and secondary schools, and respective tertiary institutions subvented by the Government) are currently provided for by the Government. That is, the level of their pay and benefits cannot be better than those of civil servants. However, this requirement is not applicable to statutory bodies established in accordance with separate legislation. It can be said that the finance and operation of these statutory bodies are managed by their respective boards. Even though the Government has appointed relevant Policy Secretaries to the boards of statutory bodies, it has been indicated by many recent incidents that the Government's monitoring of the pay adjustment mechanism of these statutory bodies is blatantly very weak, thus giving rise to "no regulation at all".

In fact, the Government has empowered statutory bodies to set their own terms and conditions of appointment for their staff. The original intent is to let the statutory bodies adopt the *modus operandi* of business organizations with a view to improving management efficiency, reducing bureaucracy and increasing competitiveness. However, whilst giving them such a high degree of liberty, certain effective monitoring measures must be put in place to avoid the emergence of numerous problems due to a lack of effective regulation.

While members of society have questioned the overly generous remuneration and benefits of top executives of the KCRC, and that top executives can still be given enormous bonuses even the performance of the Mandatory Provident Fund Schemes Authority (MPFA) is very poor, the relevant organizations have one after another quoted commercial principles as shields. While the community accuses business organizations of taking such measures as redundancy, salary cuts and freezes, abolition of bonus, and so on, to deal with the pressure resulting from an economic downturn, statutory bodies also counter the accusation by reason of the necessity to keep in line with government departments. In the face of these double standards, the regulation that can be effected by the Administration also appears to have little to write home about. The protection enjoyed by the top executives of statutory bodies is obviously better than the senior government officials present here, because what they are holding is really an unbreakable golden rice bowl.

Madam Deputy, we are certainly not seeking to break this golden rice bowl. If the relevant organizations are really doing a good job with their performance, and if they and their staff are delivering value for money, I believe the community will also agree to giving them remuneration commensurate with their performance. However, what criteria do we actually use to evaluate their performance? And who will monitor them?

In fact, while we subscribe to the idea that statutory bodies should be managed according to the commercial model, they should not use the excuse of keeping in line with the Civil Service any more to refuse to follow the business practice of compressing establishment, and reducing pay and benefits during an economic recession. All their standards of pay and benefits, and internal operation should be the same as other business organizations, and the remuneration of staff should link directly with performance. Particularly when the Government is considering making reference to private enterprises in the

study of linking civil service pay with performance, there should not have any room for the staff of the statutory bodies to run in the opposite direction.

Certainly, in discussing the issue of linking performance with pay and benefits, the question of regulation must be considered together. Otherwise, statutory bodies may just ignore social feedback or standards, and act wilfully. In fact, if problems should emerge with public bodies, the Government as the regulator is duty-bound to shoulder the major responsibilities. Therefore, the Administration should further review the role of government officials appointed to the boards of public bodies by virtue of the authority vested by legislation, or the work of regulating public bodies would just be empty talks.

The basic objectives of today's motion and amendments are consistent. I hope Members will support and pass them with a view to conveying a clear message to the Government. I so submit.

**MR FREDERICK FUNG** (in Cantonese): Madam Deputy, the operation of statutory public bodies in Hong Kong has changed from being managed entirely by the Government to autonomous management by the statutory bodies through the Government's gradual devolution of power. Though it can be said that this will help inject market economy thinking into public bodies to enhance their effectiveness, a proven system of regulation must be put in place to monitor this *modus operandi* and to restrain their operation. At present, however, government supervision and restraint on these public bodies exist in name only. Both the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I are disappointed about this.

At present, government supervision of various statutory public bodies is carried out mainly through the appointment of Policy Secretaries to the boards of management of these bodies. The original intent was that government officials could monitor these relatively independent public service providers on behalf of the Government to prevent them from being unregulated and doing anything they like. Judging from the present circumstances, however, this monitoring system has proved to be not very useful. Otherwise, disclosures of such absurdity of the senior staff of the KCRC enjoying exceptionally generous benefits like a dozen of private club memberships, luxury pleasure craft, limousines, and so on, which are so different from usual cash benefits, would not have been dumped at

our doorsteps. When responding to the questions raised by Members of this Council in respect of this matter, certain government officials had even indicated that they were ignorant of such a "totally unregulated" situation. Earlier on, some senior staff of statutory public bodies openly stated that their pay and benefits were determined in accordance with the pay levels of chief executives of comparable organizations in the market, thus indirectly proving that the pay of the senior staff of these public bodies is determined solely on the basis of market trends. In theory, it will not cause major problems if commercial organizations follow this principle of operation. However, various statutory public bodies constantly neglect their social functions, their responsibilities towards society, as well as their semi-monopolistic operation. Therefore, I share with the ADPL that this motion debate should seek to present this issue pertaining to the lack of a pay determination system which is comprehensive, clear and effective and a surveillance system to this Chamber where debates are conducted for discussion, in the hope that the Government can address this issue seriously.

While it is worthwhile for us to discuss the above-mentioned pay mechanism and structural issues, the public accountability and transparency of various statutory public bodies are of great importance too. As I mentioned earlier, although the operation of these public bodies rely primarily on market forces, it does not mean that the senior management of these bodies are not required to be accountable to the general public, or to explain clearly to the public simply because government officials have been appointed to the boards of management of these bodies and the market factor has been embedded in their operation. Under the current governance culture that is putting increasing emphasis on transparency and accountability, we feel that the Government should conduct a review of these public bodies also from this angle. Moreover, it should consider the interests of the general public. Furthermore, it must refrain from devolving all powers and responsibilities to these public bodies and allowing their senior staff to decide the *modus operandi* on their own without regard for public interest.

Both the ADPL and I share the view that these public bodies must not remain stagnant when even the relatively conservative SAR Government has undertaken to study the introduction of an accountability system for senior government officials. These public bodies should indeed answer public aspirations and allow the committees and subcommittees of this Council to raise questions to their senior executives and ask them to render replies. On the other

hand, the Government should ensure government officials can really effectively monitor the functions of these public bodies after being appointed to their boards of management.

I also support the motion proposal to expand the ambit of the Audit Commission to enable it to scrutinize the day-to-day operation of these public bodies and table reports to this Council so as to deter certain public bodies from merely exercising the right of monopoly without fulfilling the obligation of being monitored.

With these remarks, I support the motion and the amendments.

**MR ANDREW CHENG** (in Cantonese): Madam Deputy, in this motion debate today, I shall present the views of the Democratic Party in respect of the two railway corporations, namely the MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC).

Last year, the MTRCL became the first public organization listed on the Stock Exchange of Hong Kong, but the Government is still its largest shareholder. As for the KCRC, it is even wholly-owned by the Government. But the government umbrella has given rise to an extremely frustrating situation as regards the two railway corporations. When these corporations wish to develop and acquire lands, they can always expand as much as they like in the name of public interest by exercising their powers conferred by the relevant legislation. But when the public inquire into the remuneration of their senior management, they immediately refuse to disclose anything, saying that this is business secret. In other words, these so-called public bodies can simply shift between two roles, which allows them to extort the maximum benefits with minimum transparency. It is such a morbid environment that has enabled public bodies to grow in strength and become difficult to monitor. It is thus small wonder that so many senior government officials have come to regard the chairmanship of these organizations as lucrative posts after their retirement. So with the indulgence of the Government, one independent kingdom has emerged after another.

Madam Deputy, from the reply given by the Chief Secretary for Administration to the Legislative Council last week, we notice that of all the

chairmen and chief executives of the five public organizations, the two offering the highest remuneration are precisely the MTRCL and the KCRC. Over the past five years, the KCRC has ranked top among all public bodies in terms of the growth in senior management, the rate of growth being 100%. The remuneration of its senior management has also seen the highest rate of growth, at 70%. I think the two railway corporations should really explain to the public why their senior management should be offered such high remuneration, and what justifications there are. Unfortunately, the Government has simply kept repeating that the packages concerned have been set with reference to the private-sector market, without, however, producing any remuneration statistics about similar posts in the market. It seems that public organizations have set their remuneration packages very arbitrarily and with too much flexibility. The Democratic Party and I are of the view that since public organizations have to discharge a function of serving the public, they should lay down a set of pay standards that is in line with public interest, one which members of the public can understand and accept, or else it will be very difficult for the remuneration packages of their staff to command the support of people.

Over the years, the numerous blunders committed by public organizations, particularly the KCRC, have led people to wonder whether the government representatives on their managing boards have properly discharged their monitoring duties. One recent example, one classic example, that we have heard of is the award of the superstructure development rights associated with the northern rail tracks of Hung Hom Station a year or so ago. The KCRC awarded the development rights to Cheung Kong (Holdings) Limited by way of single tender, but because of subsequent market and other changes, the latter unilaterally withdrew from the project. Since both sides had not signed any contract, Cheung Kong (Holdings) Limited was not required to make any compensations. The senior management of the KCRC, in the end, had to suffer the ill-effect of the unfair competitive environment created by itself; they got nothing in the end. But still they did not have to shoulder any responsibility. What is more, the Government even tried to help the KCRC explain away its mistake, saying that there had been no financial losses. The Government has tried to cover up the blunder of a public organization; we maintain that the government representatives on the KCRC managing board, including the Secretary for Transport and the Secretary for the Treasury, are both guilty of serious negligence.

Last month, another scandal connected with the KCRC was exposed. As we discovered, its senior management led by the Chairman actually enjoy a very privileged package of fringe benefits including three luxurious launches, expensive limousines and corporate membership of several clubs. Besides, its office in Central, with a monthly rental of some \$200,000, has only been used for just several meetings through the years. The repeated blunders with the decision-making and operation of the KCRC aptly show that public organizations have already become some kind of "independent kingdoms" which are not subject to any control and which can squander public money in any way they like. If we allow this situation to continue, we will only induce such organizations to further ignore their public accountability, to continue with their pursuit of selfish benefits, in detriment to public interest.

Although there is an internal audit division within the KCRC to audit its books, the reports compiled by the audit division will not be released, so we simply do not know whether the KCRC management will accept these reports. I maintain that the concept of "value for money" should also be applied to public bodies, and their books should likewise be audited by external auditing bodies. Only this can achieve fairness and openness. The Audit Commission is fully capable of playing such a role, the only problem being that public bodies may not be bold enough to accept auditing by the Audit Commission and hold themselves accountable to the public due to their very messy books.

Madam Deputy, I so submit.

**MISS LI FUNG-YING** (in Cantonese): Madam Deputy, amidst the current economic downturn and the prevalence of layoffs and wage cuts, it is very sensitive to discuss the pay adjustment mechanisms of statutory public organizations and the Hong Kong Monetary Authority. To begin with, I must make it very clear that the people of Hong Kong do not actually have any "grudges against the rich or dislike for the poor", and the "wage earners" are not in any way jealous of the senior management of public bodies who may each earn as much as \$7 million or \$8 million a year.

As statutory bodies, public organizations are unique in their mode of operation, in the sense that they must adhere as much as possible to market practices in their operation albeit they are using public money. How should a balance be struck between adherence to market practices and using public money?

A recent survey conducted by a personnel consultancy shows that the salaries of the chief executives of Hong Kong corporations are the fifth highest in the world. But must the salaries of the senior management of statutory organizations be linked with those of their counterparts in private corporations?

When the Chief Secretary for Administration replied to the written question asked by a Member last week, he said that the remuneration offered to the senior management of statutory public organizations should be in line with those offered in the private market in which they competed for manpower resources; the relevant remuneration packages should be able to retain people with the appropriate skills, experience and professional expertise. He also said that it was inappropriate to lay down any salary standards for the senior management of statutory public organizations. But what kind of a market are statutory public organizations facing in Hong Kong? Prof Simon HO, Director of School of Accountancy, The Chinese University of Hong Kong, has recently written an article, in which he points out that with respect to the setting of remuneration for the senior management of statutory organizations, the Government only focuses on adjustments in response to market trends without considering the performance of these organizations against the predetermined targets and other factors like unique market circumstances, monopolistic positions of individual organizations, career risks for the individuals and the socio-economic setting. The analysis of Prof HO can aptly reflect the deficiency and inadequacy of the saying that the remuneration offered to the senior management of statutory public organizations should be in line with those offered in the private market in which they compete for manpower resources. The discussions about the remuneration of the senior management of public organizations going on in the community recently can show precisely that these organizations are all lacking in a satisfactory mechanism on setting the remuneration of their senior management.

Besides the mechanism on setting remuneration, the community is also dissatisfied with the composition of the managing boards of statutory bodies. The Government can always claim that there is a stringent mechanism on selecting the heads of public organizations, to make sure that only the most suitable candidates are chosen. But the general public neither knows nor understands what this stringent mechanism is. What we can see so far is that the establishment of a new public organization will always mean the drain of one more senior government official; or, posts with high salaries are frequently tailor-made for senior government officials due to retire soon. All this has led

to the criticism that some public organizations have become the clubs of retired senior government officials.

Those appointed to these statutory bodies may well be wise and competent people, but such appointments will still lead to many personnel management problems. Policy Secretaries now sit on the managing boards of some statutory public organizations as board members to monitor the operation of these organizations. But the board chairmen they have to deal with may well be their colleagues or supervisors in the past. Torn among the interests of the Government, the public and the organizations concerned, can these Policy Secretaries make any fair, just and sensible decisions?

Madam Deputy, faced with the current economic downturn, the Government has repeatedly called upon the people to join hands in overcoming their difficulties. But how can we reduce disputes in society and work out a common direction, so that we can overcome our current hardships? The Census statistics released by the Census and Statistics Department show that the Gini Coefficient, which reflects the wealth gap, is rising continuously; the masses are faced with the immense pressure of layoffs and wage cuts, but we find that the senior management of some statutory public organizations can still increase their own salaries year after year. The public have no way of knowing why, and society as a whole have no way of monitoring their performance. In that case, how can the people be convinced, and how can there be any common direction in society?

The closed mode of operation of statutory public organizations is now outdated, and market adjustments, sensitivity of information, and so on, frequently talked about by the Government are no longer valid excuses. The people are now waiting for a reasonable and convincing reply from the Government.

With these remarks, I support the original motion and the amendment. Thank you, Madam Deputy.

**MR SIN CHUNG-KAI** (in Cantonese): Madam Deputy, I shall focus on the Hong Kong Monetary Authority (HKMA). This is appropriate, because the incumbent Chief Secretary for Administration, now sitting in this Chamber, used to be the Financial Secretary. The HKMA under his leadership achieved very

"brilliant results". Let me give some statistics for Members' reference. The establishment of the HKMA has expanded from the initial 289 staff to 607 now, with an increase of 10% per annum. Is it reasonable and justified to have such a huge establishment? Does the Financial Secretary have any means of checking? Although the Audit Commission is empowered to carry out value for money audits, it has never audited the books of the HKMA, nor has it ever submitted any report on the HKMA. According to the relevant annual reports, the annual remuneration of Mr Joseph YAM in 1994 was between \$5.5 million and \$ 6 million, and this rose to between \$ 9 million and \$9.5 million last year — a very "brilliant" achievement indeed. As pointed out by many colleagues earlier on, the Chairman of the Federal Reserve Board can only earn \$1.6 million a year, and the remuneration of Mr Joseph YAM is six times as much. Madam Deputy, the HKMA has been surrounded by criticisms of all kinds since its establishment in 1993, and since the financial turmoil, it has even been referred to as an "independent kingdom", with its Chief Executive Joseph YAM being called the "Tsar of Financial Affairs". It is not at all difficult for us to understand why the public have such an impression.

In 1992, the Government merged the Office of the Exchange Fund and the Office of the Commissioner of Banking to form the HKMA. The then Secretary for Monetary Affairs stressed at that time that the intention was not to set up a central bank like the Federal Reserve Board, which was independent of the Administration. In brief, he said, the HKMA would not be independent of the Government, adding "the Authority would remain firmly under my control". The intention of the Government was that the Financial Secretary's control over the HKMA should not be limited to its power of using the Exchange Fund; his control should cover even the HKMA's monetary policy. The aim was just to allow the HKMA to utilize resources on employing staff with terms and conditions different from those of the Civil Service. But in reality, the HKMA has since been trying to enhance its role as a central bank. In the name of managing the Exchange Fund, it has sought to expand its powers and establishment rapidly. The situation seems to have gone out of control by now.

In 1992, the Liquidity Adjustment Facility was put in place; in 1993, the Exchange Fund Bills Programme was expanded, and Exchange Fund Notes were issued. All these measures have greatly increased the ability of the HKMA to carry out operations in the open market, thereby enhancing its central bank functions like the regulation of money supply and interest adjustment. At the same time, it also absorbs the balance funds of banks, thus reducing its own

stability as a currency board and sowing the seeds of having to effect an interest hike in 1997. Economist Milton FRIEDMAN pointed out at the time that Hong Kong was gradually deviating from the system of a pure currency board, showing an intention of establishing a central bank role. The HKMA admitted this. For instance, the book entitled *The Practice of Central Banking in Hong Kong* explains how the HKMA is performing functions similar to those of a central bank.

When the Hong Kong Dollar was attacked in 1997, the outflow of capitals led to negative positions in the relatively small bank balances. Interest rates thus shot up, dealing a serious blow to the local economy. It was only after the introduction of seven technical measures in 1998 that the currency board system was once again strengthened. The HKMA's gradual development towards a central bank seems to run counter to the original legislative intent. It is very much a matter of concern whether the Financial Secretary has adequately considered the impact of these measures on the currency board system, and whether he has exercised appropriate supervision in this process.

But as modern-day monetary policies become increasingly technical, it has become increasingly difficult for the Financial Secretary to grasp these policies adequately and exercise appropriate control. Besides, with the protection of a central bank, the Government also seems to have minimized its intervention for the sake of currency policy autonomy. As a result, the reality seems to have started to depart from the then Secretary for Monetary Services' hope that the HKMA will "remain firmly under my control".

The recent HKMA purchase of office premises by using the Exchange Fund is further proof of the Financial Secretary's incompetent supervision. Many financial institutions do own magnificent buildings as a means of fostering customer confidence and attracting customers. But as a regulatory body, does the HKMA really need such grand premises? The HKMA now already owns a Class A office at Citibank Plaza. This is already appropriate. Frankly speaking, as a regulatory body, the HKMA needs only ring up the persons concerned, and those subject to regulation must attend its office. The HKMA can conduct field investigations, and it can also ask people to come to its office. No one will probably wish to deal with the HKMA just because its premises are particularly grand and ornate. Frankly speaking, most of the HKMA's clients are people under its supervision, and they all do not wish to go to its office. There is simply no need for the HKMA to set up an office at a prime office site.

But then, our former Financial Secretary, that is, the incumbent Chief Secretary for Administration, still approved the relevant contract on the last day of his office. It seems that the then Financial Secretary failed to discharge its supervisory role properly. If the sum of \$ 3 billion had to come from the fiscal reserves, I do not think the allocation could have been approved so easily. We already have a deficit of \$60 billion now, but the Government will certainly argue that the money came from the Exchange Fund, and that it is fine to use others' money that way. But is this really the case in reality? All these problems can aptly show that such regulatory bodies have run out of control.

Madam Deputy, there are many regulatory bodies under the Hong Kong Government — the HKMA, the Securities and Futures Commission and Office of the Commissioner of Banking. Perhaps, not all their heads are engaged in the "musical chair" game. But the relevant mechanism has no doubt raised the prices of services in general. When one organization charges higher fees, others will follow suit. Then, the first organization to raise its fees will raise its fees still higher on the ground that those charged by others have risen. There is always a problem of rising fees. If we continue to make comparison in this way, when can we have reasonable pricing? I hope that the Chief Secretary for Administration can answer this question.

**MR LAU PING-CHEUNG** (in Cantonese): Madam Deputy, before I come to my speech proper, I wish to make a declaration of interest. I am a non-managing director of the Urban Renewal Authority (URA), and the review requested by the motion covers also the URA. In brief, Mr Albert HO's motion today asks for a review of the accountability mechanism, transparency and pay and fringe benefits of senior executives in relation to statutory organizations. Since transparency and accountability are very much emphasized these days, I am in principle in support of items (a) and (c) of the motion. But with respect to those parts of the motion on the performance of government representatives in statutory organizations and the pay and fringe benefits of the executives of these organizations, I would think that more discussions are required.

When it comes to the performance of government representatives in statutory organizations, we should first consider their role and functions. Since the commissioning of the MTR in 1975, large-scale public utilities funded by the Government have all been operating as statutory bodies. Even the KCRC, which originally operated as a government department, was detached from the

Government and became a statutory organization in 1982. Such a transition has been marked by the public consensus that cumbersome government departments are not conducive to the efficient operation of the services concerned in the market.

To make sure that these organizations will follow the wishes and policies of the Government, and also to enable them to grasp the latest information about the Government, official representatives are appointed to these organizations. These official representatives are the links between the Government and statutory organizations in the course of two-way communication.

The original motion of Mr Albert HO and the amendment of Mr LAU Kong-wah seem to suggest that these official representatives have not participated adequately in the operation of these statutory organizations and have failed to play their monitoring role properly. Madam Deputy, as far as the attendance of official representatives in the meetings of statutory organizations, it is relatively easy to draw up assessment criteria. But when it comes to the discharge of their monitoring duties, there can hardly be any objective criteria. I agree that in some past cases, such as the consideration by the Housing Society (HS) to take part in housing development in the Mainland, the board members from the Government obviously failed to discharge their duties. In this specific case, they did fail to point out when the idea was first mooted that such a move would lead the HS beyond its statutory terms of reference. But we must handle the matter very carefully, lest too much intervention from government officials may lead to a situation under which official representatives in these organizations take all the lead and make all the decisions.

As for the proposal that Policy Secretaries should account for the work of statutory organizations in the Legislative Council on their behalf, I must say that there is in fact already such an arrangement now, and I do not oppose to the proposal in principle. But my bottomline is that since the business activities of public organizations such as the MTRCL, the KCRC and the URA invariably involve commercial interests, disclosure must be disclosed very careful.

In regard to the determination of salaries for the staff of statutory organizations, as I pointed out on 28 November, when this Council debated the motion on the downward adjustment of public utility charges, there are different categories of public utility operators in Hong Kong. In terms of scope of business, some of them are monopolistic in nature, while others have to compete

in the open market. Since at the very beginning, we agreed to let these operators provide their services as statutory organizations, we should let them set the salaries of their staff according to the supply and demand situation in the market. In brief, in the case of those monopolistic public organizations, the salaries of their staff should be lowered because the market demand for their services is not very large (the staff of the Institute of Vocational Education is an example). In contrast, for some specific organizations, the executives they need must possess special expertise, professional qualifications and shrewd market acumen (those of the Hong Kong Monetary Authority being an example). The market is in great need of these talents, and so their salaries are naturally higher.

The original motion proposes "to draw reference from the pay adjustment mechanism of the Civil Service". I do not agree to this. At this time of economic downturn, we can all see that the pay adjustment mechanism of the Civil Service is already out of touch with the market. Downsizing and layoffs are not considered politically correct, and even salary reductions may lead to lawsuits. Besides, there can be only one adjustment a year, which is very inflexible.

A point worth mentioning is that in some statutory organizations, authority is much too centralized, sometimes to the extent of being completely out of control. In the case of the HS considering launching housing development in the Mainland, for example, if the idea had been explained in detail in writing, and if there had been formal discussions, the official representatives on its managing board would certainly not have overlooked the matter. What is more, the fringe benefits offered by some statutory organizations are very unreasonable. One example is the five-day week system of some statutory organizations. This means that these organizations are open for only five days a week, with no one on duty on Saturdays. How can such a standard of service command public support?

Madam Deputy, the Government's strategy of setting up statutory organizations to operate utility services or provide other kinds of services is just like flying a kite — the longer the string is released, the more autonomy there will be, and the less monitoring too. I do not think that we can tighten the string on the hand, and hope the kite to still fly high on the other. If we are to strike a proper balance, we must carefully lay down a mechanism that can allow enough

flexibility and meet the requirement of public accountability. That way, we will obtain the acceptance of society, thus reducing the people's grievances. Madam Deputy, I so submit.

**MR JAMES TIEN** (in Cantonese): Madam Deputy, the motion today is about reviewing the pay adjustment mechanism of statutory organizations. The original motion and the two amendments all make it a point in saying that their only targets are senior executives, not any other personnel of lower ranks. The Liberal Party is in complete agreement to this. The motion also proposes to draw reference from the pay adjustment mechanism of the Civil Service. The Liberal Party is of the view that the organizations which have been classified as falling within the broad definition of statutory organizations over the past few days are actually public organizations of different types, and all these organizations are different from one another. For instance, the Hong Kong Monetary Authority (HKMA) operates in the financial and banking sectors, so the salaries of its staff, particularly those of senior management, are comparatively high. The case may be different for some other public organizations. For instance, the executives needed by the Urban Renewal Authority (URA) may be easily recruited from the open market, because there are suitable talents from the various property development companies. That is why the pay structure of the URA may be different. Thus it is no easy task to discuss in a very general manner whether the staff remuneration of this or that public organization is higher or lower than those of others. That said, the Liberal Party still supports the idea to review the relevant mechanism, because in any case, the statutory organizations we have quoted so far are all wholly owned by the Government.

The Government may understandably have to list individual public organizations in the stock exchange as a long-term plan. For this reason, the Government must bring these public organizations more in line with private listed companies and set up for each of them an independent management, so that they can be listed. I totally understand and support this. But some public organizations are not likely to be listed. For these statutory organizations, I suppose there should be different treatment. For instance, we should review the monitoring mechanism of these organizations. It will be impossible to list the Employees Retraining Board, for example. In that case, who should supervise the senior management of this type of organizations?

Besides, the Liberal Party is also concerned about one point. For all the examples quoted by many colleagues so far, such as the MTRCL, the KCRC, the Airport Authority (AA), the Hospital Authority (HA), the Mandatory Provident Fund Schemes Authority (MPFA), and the HKMA open recruitment for the chief executive is found only with the AA recently. The incumbent chief executives of many other organizations are either resigned civil servants or retired civil servants. Most people therefore have a wrong impression that there are conflicts of interests in one way or another, because government officials seem to have created some posts and later on, "by coincidence", take up these posts themselves. What is more, the salaries of the new posts are invariably higher than those they used to receive as civil servants. This explains why some colleagues have added the proposal of drawing reference from the pay mechanism of the Civil Service. I suppose this is their point, because they all think that the salaries one is paid for one's new post should not be higher than those one received as a civil servant before the switching over. In fact, some time ago, Mr Kenneth TING of the Liberal Party already asked a question on why the Executive Director of the MPFA should be offered so much bonuses. I think we must conduct a detailed review on this.

Moreover, we are also concerned about one point, and we think the Government should pay attention to it. The executive director of a statutory organization is monitored by the managing board or council of the organization itself, but the members of the managing board or council are all appointed by the Government — the Chief Executive, the Chief Secretary for Administration or the Financial Secretary. And, upon close analysis, we will see that in many cases, recommendations on appointments have actually incorporated the views of the executive director. This makes people wonder whether these members, appointed in their individual capacity though, will have anything much to say about the very sensitive issue of the remuneration of senior management. People may also suspect that these board members will simply refrain from saying openly to the executive director that his salaries are much too high, as long as they think that the development of the organization is satisfactory, thus making the remuneration of senior executive less in line with the market trends. For this reason, the Liberal Party supports the conduct of a full-scale review.

I still wish to raise one point about the original motion and the two amendments. Both the original motion and the two amendments mention the pay and fringe benefits of senior management; the only minor difference lies with whether reference should be drawn from the pay adjustment mechanism of

the Civil Service. The original motion and Mr CHEUNG Man-kwong's amendment both mention this point, but they are directed at the senior executives only. I also think that the pay and fringe benefits of the senior management of statutory organizations are higher than those of civil servants. If reference to the civil service mechanism can really help bring down their salaries, the Liberal Party will render its support. The original motion and the amendment of Mr CHEUNG Man-kwong do not touch upon whether the remuneration of other staff is too high. I guess the reason is that the remuneration of the other staff of statutory organizations may already be much more in line with those offered in the private market, by private organizations.

There is still one more difference. Mr LAU Kong-wah seeks to delete item (d), the item on requiring the management of these organizations to report regularly to the Legislative Council and replace it by a proposal authorizing the relevant panels and subcommittees of the Legislative Council to require the attendance of the chairmen and executive directors of these organizations at Legislative Council meetings. I do not think that there is any big difference, because I am sure that when invited by the Legislative Council, these organizations will certainly be happy to send their staff to attend the relevant meetings. Whether there is any requirement, their chairmen and executive directors will always be prepared to report to the Legislative Council. Therefore, the Liberal Party will support both the original motion and the two amendments.

**DR RAYMOND HO:** Madam Deputy, we learnt the criteria adopted by some of the statutory bodies for determining and adjusting the remuneration of their senior executives from a written reply by the Chief Secretary for Administration, Mr Donald TSANG, in response to a question raised by one of our colleagues in this Council last week. Information on the total remuneration of senior management staff of these organizations is also included in the written reply. Actual remuneration of individual senior management staff has not been disclosed as the information is considered commercially sensitive. Nevertheless, we can make some guesses here by doing some simple calculations. The salaries of these senior executives range from \$3 million to \$9 million a year.

It is difficult to tell whether they are on the high side, particularly when they are supposed to be at least as competitive to those offered in the private

sector. The only thing we know about remuneration of senior executives in the private sector is that the information is also considered commercially sensitive. All I can say is that the pay and fringe benefits of senior executives in most of the statutory bodies are more competitive than the packages offered to their counterparts in the Government. Although members of the public and Members of this Council appreciate the sensitive nature of information relating to the pay of senior executives, many of us are more concerned about the lack of transparency in the existing pay adjustment mechanisms of these statutory bodies.

While the Government is talking about increasing its transparency and enhancing its accountability, the public bodies should follow its cue to do the same. Every step should be taken by them to clear up the suspicion on the part of the public that remuneration of senior executives of the statutory bodies are set by a closed shop of senior government Policy Secretaries and their retired mentors taking up positions in these bodies. A pay and fringe benefits adjustment mechanism, therefore, has to be put in place.

On the other hand, the Government should strengthen the monitoring role of the boards of management of these organizations. The Policy Secretaries appointed to these boards must, therefore, play an active part in it. Funded by public monies, these statutory bodies should be subject to the scrutiny of the Director of Audit. The exercise will assure the public that the operations of these bodies are in line with the requirement of "value for money".

To enhance the accountability and increase the transparency of these statutory bodies, the Legislative Council should also be given a stronger monitoring role. The chairpersons and chief executive officers of the statutory bodies should at least attend the Legislative Council committee and subcommittee meetings and answer questions from Members if it is deemed necessary.

Madam Deputy, the statutory bodies, being financed by public funds, should be accountable to the public and be, therefore, subject to the scrutiny of the public. I so submit.

**MR ALBERT CHAN** (in Cantonese): Madam Deputy, many statutory organizations are established by law; through the enactment of legislation, they

are given the legal authority to do specified work. But when members of the public ask these organizations to account for their work, they will say that they operate on a commercial basis and refuse to comply on the ground that much of the information involved is commercial secret. When they wish to get power, they will say that they are public organizations, and that they must be given the necessary power to protect themselves through the enactment of legislation. But when they do not want to be held accountable, they will refuse to account for their work on various excuses such as commercial principles and business secret. Their identity is really very strange, and I would describe them as "freaks"; Mr Albert HO quoted some press editorials and described them as "bats" just now. I think it is also a very appropriate description. If we still do not conduct a review on these organizations, I am afraid Hong Kong will gradually become an abnormal society.

There are two major problems with these statutory organizations. The first one concerns the criteria of staff appointment. Some statutory organizations basically do not take on any retired civil servants. For instance, the Housing Society (HS) and the MTRCL do not employ any retired civil servants at the moment. But some other organizations have almost become a club of retired civil servants, a "retired civil servants' bureau". The salaries of the retired civil servants working there are even higher than those they earned as Administrative Officers before retirement, but they are not subjected to any accountability. What exactly are their duties? Must the top posts of the organizations concerned necessarily be filled by them? It is very difficult to make any assessment here. When it comes to appointment criteria, the Government must conduct detailed studies and set down some clear-cut standards. No one must be allowed to make use of his authority and influence when he is in power to make arrangements for the employment of his close associates with high salaries, nor must anyone be allowed to create new posts incessantly.

The second problem is the *modus operandi* of these organizations. I think it is best to describe their mode of operation by making an analogy to "a man dressed in black trying to catch a crow on a dark night". I mean, people simply cannot see what is going on, except when the "moon" creeps out occasionally. Only then can we see some vague images, but still we are never sure about their objectives and mode of operation. This is a most unhealthy situation which makes people rather "unhappy". Would it not do harm to Hong Kong people and waste taxpayers' money if no improvement is made and these organizations are allowed to continue to exist?

Recently, as a result of press reports and anonymous complaints, members of the public have started to learn a bit more. People have chosen to make anonymous complaints probably because they are afraid that once their identity is disclosed, they may be accused of divulging confidential information and dismissed or even sent to prison. The operation of these organizations can be described as "abnormal". Their secretive operation and the many problems that have emerged can easily lead to accusations about their collusion with the business sector. Gradually, these organizations may become "collusion bureaux", and it may appear that what they do are just for the interest of individual consortia; people may think that public interests are totally ignored. Members have quoted many examples, one of these being the development at Hung Hom Bay by the KCRC. The former Land Development Corporation (LDC) was once accused of borrowing several hundred million dollars from some consortia with no interests but a deferred instalment repayment schedule. Recently, the HS considered launching property development in the Mainland. Fortunately, due to the pressure from the media and various sectors, the Government suddenly woke up, and the decision was withdrawn. And, we do not know too much about the latest urban renewal plans of the Urban Renewal Authority. If these problems are not mitigated, if we continue to have "a man dressed in black trying to catch a crow on a dark night", society as a whole will continue to suffer.

Madam Deputy, Members belonging to the Democratic Party have talked about the cases of different organizations. I now wish to concentrate on the HS, because I am very much dissatisfied with its mode of operation in the past. The HS used to be run just like a private club, with a group of "old friends" controlling the management. Works contracts were handed out among these "old friends". After years of criticisms, the HS is now better than what it used to be 20 years ago, but it is still plagued with problems.

Just a few years ago, the HS decided to redevelop seven streets in Tsuen Wan and five streets in Kennedy Town. The plan was approved by the Government and supported by the public. But in the end, due to financial reasons, the HS unilaterally decided to abandon these two projects without conducting any consultation. The residents had waited for many years, but the redevelopment plans were still nowhere in sight. There was a popular saying among them at that time: "The residents have been waiting like idiots". In the end, the LDC decided to "clean up the mess" and take over the projects despite the prospects of losing a billion dollars or so. The profit-oriented attitude and secretive operation of the HS must be reproached.

There are really many problems with the HS. The HS now manages many housing blocks, and it still charges a manager's fee of 10%, which is completely out of touch with the market. The residents of many housing blocks managed by the HS decided during their meetings to set up owners' incorporations. But the HS simply abstained from voting. The Government has been trying hard to encourage the setting up of owners' incorporations, but to protect its own interests, the HS has time and again acted against the Government's position and principle and refused to support the setting up of owners' incorporations. It seems that such an absurd thing can only happen in Hong Kong.

Many of these public organizations operate very much in secret, with no accountability and regard for public interest. This is really frustrating. For a very long time, Mr Victor SO, Executive Director of the HS, has not met with the public and the Legislative Council. He has become almost "invisible". I maintain that the performance of such senior executives must be condemned. If any senior executive of these organizations do not intend to attend these meetings, it is better to dismiss them as early as possible. That way, the organizations concerned can save several million dollars a year. Madam Deputy, I hope Members can look at all these problems and organizations very clearly. Do not let them fish in troubled waters without being noticed. Thank you, Madam Deputy.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Deputy, the motion topic today is about reviewing the pay adjustment mechanism of statutory organizations and the Hong Kong Monetary Authority (HKMA). Having looked at the title of the motion, I wish to say clearly that Members must not "victimize the innocent". As we all know, the whole thing actually started with the disclosure that the KCRC senior management has access to three luxurious launches, and that the Corporation has a meeting room in Central. This has caused a public outcry, and people all think that their salaries and fringe benefits are much too high. But I am worried that such a debate may well fail to deal with the senior management of these organizations, but end up "victimizing" the employees of the lower ranks instead. Therefore, before I discuss the motion topic, I must first ask Members not to "victimize the innocent", because I have really seen many such terrifying cases. It is especially true at this very sensitive time when society is torn by economic sluggishness, a high unemployment rate and waves of wage cuts. It will be very unfortunate if we "victimize the innocent" now. Therefore, let me make it clear from the very beginning that

our debate today is about the remuneration of the senior management of statutory organizations.

Why do the people react so strongly when it comes to the remuneration of the senior management of statutory organizations? The reason is very simple. As we all know, public organizations are providers of public services, and some of them enjoy specific powers vested in them by law. Many of them are funded by the Government. More importantly, most of the management personnel of these organizations are appointed by the Chief Executive, and these organizations can only appoint their executive directors with government approval. For all these reasons, the people have very good reasons to ask for transparency and acceptability with respect to the setting of salaries, allowances and fringe benefits for the senior management of these organizations. The fact is that the high salaries and numerous fringe benefits enjoyed by the executive directors and senior management of public organizations have aroused public discontent.

Why are the people so discontented? I think there are three reasons. The first reason is the creation of "lucrative posts" by "insiders" for "insiders". We can see that nearly all public organizations have become a club of retired top government officials. The people all think that top government officials have been creating "lucrative posts" either for "insiders" or themselves in the future. They are angry because they have seen many such examples, all involving "lucrative posts".

Second, the people are angry because these organizations are subjected to no control at all. Their managing boards are incompetent, failing to monitor their executive directors or the entire organization. Or, these managing boards simply turn a blind eye to the very unreasonable benefits enjoyed by their executive directors. These incompetent managing boards are all appointed by the Chief Executive, and, when he does so, he will only select those close to him, or even those who are "well-behaved" in his eyes. I mean, he will only appoint the most "well-behaved" persons to these managing boards. Those who are not will not be appointed. So, the people are all the more angrier because of this, thinking that these managing boards have all failed to play their role of monitoring. And, even with Policy Secretaries as members of these managing boards, monitoring is still very difficult. This has made the people even angrier. The senior management of public organizations has acted without any proper control, and the managing boards are composed of the most obedient people appointed by the Chief Executive. That way, the managing boards have all

literally become rubber-stamps, thus reinforcing the "mutual protection among government officials" and the "happy" system for senior executives.

The third reason is that, as seen by the people, these senior executives earn very high salaries but are very rude in manners. When demands are put to these top executives not to increase fees and fares, we can see that they all behave as if the people of Hong Kong owe them a great deal. They must not forget that their organizations are making very huge profits. When the people ask them to increase transparency and appreciate the people's hardship, they all look so very upset. The people are angry because they must use public transport every day and thus have to pay exorbitant fares. But then when they are forced by the heavy burden to ask the executive directors of these organizations to appreciate their hardship, these executive directors all look so upset. When the people ask these senior executives not to ask for such high salaries, these executives simply keep talking about commercial principles. The people can thus see a contrast here. These senior executives will talk about commercial principles when asked not to ask for unreasonably high salaries, and fringe benefits but they will all be upset when the people express their wish of having lower fares and ask them to appreciate their plight. The people are extremely dissatisfied with such behaviour.

For all these reasons, I think no matter what reforms we are planning to introduce, we must first eliminate the practices of "mutual protection among government officials". We very much hope to see the reform of the managing board composition of public organizations and their accountability. The highest decision-making bodies of most statutory public organizations are the managing boards appointed by the Government. We maintain that the selection of managing board members must have the support of the people. The composition of any managing board must be widely representative; all managing boards must operate with transparency, and they must account for their decisions to the public. These managing boards must also have widely accepted legitimacy. We hope that following this debate, the Government can refrain from appointing "insiders" with "good behaviour". Instead, it should conduct a full-scale review on the managing board composition and mode of operation of public organizations. The review should cover the possibility of enhancing the representativeness of managing board members, in particular, the appointment of more grass-roots people able to grasp the pulse of society to the managing boards of various public organizations. Besides, the review should also cover the idea of requiring managing board members and others to account for their work and decisions to the Legislative Council and the public on a regular basis.

Very often, we hear people ask what is meant by reasonable levels. Some argue that the salaries of the senior management of public organizations should be linked to those of their counterparts in the commercial sector and the private market. But should we thus link the remuneration of the HKMA's senior executives to bank "taipans" simply because it has to manage banks? I do not think that this is tenable reasoning because these "taipans" are commercial organization employees. I think the remuneration of the senior management of public organizations should be linked to those of civil servants. In other words, their salaries should be linked to those of directorate officers because their duties are similar. Thank you, Madam Deputy.

**MR FRED LI** (in Cantonese): Madam Deputy, I am responsible for discussing the issue in respect of the Airport Authority (AA).

I believe many people of Hong Kong are proud of having a world-class airport. Behind this reputable airport, Hong Kong people have actually injected huge resources to operate it. Last year, a total of \$480 million was spent on staff salaries and related expenditure, with 5% of the total sum, or \$26 million, going to eight senior staff members.

Is such a tilted distribution of resources reasonable? Is it worthwhile to use more than \$200 million to employ senior staff?

Since its formal establishment in December 1995, the AA has made a series of blunders or delayed responses to contingencies, which had not only left air freight in a virtual standstill, but also brought losses to Hong Kong economy, and damaged Hong Kong's international reputation.

Members may still recall the chaotic opening of the new airport. The chaos revealed that the AA was actually functioning like an independent kingdom, which the Government and even the AA Board found it hard to monitor. Mr Henry TOWNSEND, former Chief Executive Officer (CEO) of the AA, admitted in the new airport inquiry hearings that the briefing submitted to the Government had contained misleading information. Even Mr WONG Po-yan, former Chairman of the AA, once remarked that there was no way the AA Board could access information related to the meetings held between the AA and the Government.

If the AA can draw lessons from its past experience, the public may not necessarily question the capability of its senior staff. Unfortunately, the chaos occurred on the inauguration of the airport repeated when Hong Kong was hit by Typhoon Utor in July this year.

I will not dwell on the details of how many people were affected during the attack by Typhoon Utor. The crux of the problem rather lies in the fact that the AA is wholly owned by the Government. Its main duties are airport ground management and new airport development. On the other hand, the Civil Aviation Department (CAD) is responsible for providing services relating to air traffic control, navigation equipment, air rights management, licensing of air crew and maintenance personnel, issue of Certificates of Airworthiness, and so on. Although the work of the AA and the CAD is equally heavy, why are the senior staff of the AA paid higher than those of the CAD? I wonder if this is because the AA can peg its pay to business operation since it operates on the so-called commercial model and can therefore offer higher pay. Has the AA forgotten the fact that airport management in Hong Kong is actually a monopoly and that it is financed by the Government?

Although the number of senior staff of the AA has been reduced from eight last year to five this year, the annual remuneration of the newly appointed Chief Executive Officer of the AA, inclusive of housing allowance, retirement benefits and contract gratuity, amounts to \$4 million to \$5 million. The combined sum of pay and allowance is definitely far higher than that received by the Director-General of the CAD. At present, the Director-General of the CAD, a D6 directorate-grade officer, is paid approximately \$2 million a year. Even if housing allowance and retirement benefits are factored into the computation, the total amount is believed to be not exceeding \$3 million. At the same time, the annual pay of the Chief Executive Officer of the AA is higher than the \$1 million pay received by the Chairman of the United Kingdom Civil Aviation Authority.

In sum, the annual pay of the senior staff of the CAD, including the Director-General, the Deputy Director-General and five Assistant Director-Generals, totals approximately \$115 million. Even if their housing allowances and retirement benefits are included, the total amount will still be far lower than the annual remuneration of the senior staff of the AA.

The objective of adopting commercial principles of operation is to get rid of the Government's meaningless bureaucracy and to allow the airport to operate in a more flexible manner. But this does not mean that the senior staff of statutory bodies are then free to enjoy unreasonably high pay and benefits.

With these remarks, I support the motion.

**DR LO WING-LOK** (in Cantonese): Madam Deputy, I would like to say a few words on how I would vote later and my justifications.

In my opinion, both the original motion and the two amendments merit our support. As far as I understand it, however, most of the wordings contained in Mr LAU Kong-wah's amendment will not be included in the motion put to the final vote if Mr CHEUNG Man-kwong's amendment is passed.

I think the wordings of Mr LAU Kong-wah's amendment is the most desirable, particularly the part related to fringe benefits, that is, bonus, housing allowance, and so on. Therefore, I will technically abstain from voting on Mr CHEUNG Man-kwong's amendment, but I will support the original motion and Mr LAU Kong-wah's amendment.

I understand that the following Members hold similar views. They are Mr Eric LI, Mr Abraham SHEK, Dr LUI Ming-wah, Mr Bernard CHAN, Mr NG Leung-sing and Dr Raymond HO.

I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, earlier, Mr LEE Cheuk-yan mentioned that many members of the public were extremely angry about the excessively huge salaries currently enjoyed by the senior management of the various public organizations. Mr LEE also a number of reasons. Here, I should like to add one point. Why are the people so angry and upset? One major reason, *inter alia*, is that the public knows that every dollar and cent spent by the public organizations is the people's hard-earned money. How can the people be not angry when they see that their money is being squandered wantonly? I therefore feel that when talking about the remuneration of the

senior executives working of public organizations and how they squander money wantonly, we should try to understand the general public's feeling.

Many cases have been cited by Members as examples. Indeed, the past misdemeanours of public organizations are just too numerous to name. The public cannot help but ask why did such things happen. The answer is in fact very simple. This situation is all attributable to the inadequacies of the existing system, the inefficient monitoring efforts made by the Government, as well as the lack of transparency in the operation of these organizations which enables them to do whatever they wish to.

In the past, the Government has turned a number of government departments into public organizations by way of corporatization, with a view to combining the private sector's strong point of flexible resources allocation with the moderate staff management of government departments. However, due to the lack of monitoring by the Government, the flexibility in resource allocation has made it possible for the senior executives of public organizations to use resources arbitrarily or even transfer the resources between each other in an underhand way. On the other hand, moderate staff management has also been abused. The pay of the senior executives is not linked with their performance but can be arbitrarily adjusted with the market trend. That is why the pay of the senior executives in public organizations is much higher than their job performance.

Why have the public organizations not been put under efficient monitoring, so much so that they are allowed to develop into the independent kingdoms before us today? The first reason is related to the origins of public organizations. The original objective of the Government to gradually change certain government departments into public organizations is to reduce the Government's public services commitment by providing certain public services like private business operations running on a self-financing basis in particular. For this reason, these public organizations always stress that they are business operations and have to put profit before anything else. What is more, they have even made this an excuse for not shouldering their social responsibility as wholly owned organizations of the Government. As also mentioned by many Honourable colleagues, rather than being answerable to the public, these organizations have often shirked their social responsibility. The groundless tariff increase proposals repeatedly made by public utilities recently are just

some obvious examples. So, in addition to adding to the burden on the public, these organizations are also exploiting the public to maintain their operation.

Another reason accounting for the lack of monitoring is that the Government of the Special Administrative Region (SAR) is by no means an elected government accountable to the public. As it is not accountable the public in making appointments to the managing boards, naturally the SAR Government will select those people who are "close" to it and turn a blind eye to the senior management of these public organizations when discharging its monitoring duties. That way, the mechanism for monitoring public organizations has in effect been handicapped and thus not functioned at all. Moreover, since their sense of accountability is very weak, government officials will naturally seek to avoid any public accountability as far as possible when designing the accountability system for these public organizations. Indeed, these public organizations have since a long time ago been regarded as a "retired senior government officials' club", or an "enfeoffment system" with Hong Kong characteristics whereby the SAR Government will appoint retired senior officials to these "lucrative posts" in the light of their "merits" measured against the principle of "apple-polishing" or selecting only those persons who are close to the Government. For their part, seeing that they may be appointed to the relevant posts in future, the incumbent government officials will naturally include as few restrictions as possible when designing the accountability system concerned. Thanks to the commercial principles and the lack of accountability sense on the part of the Government, the existing public organizations are not subject to any monitoring and have thus "gone out of control".

At present, the management of the public organizations is obviously not properly monitored. In view of this situation and particularly the wanton squandering by these organizations, the people cannot help but query the sincerity and honesty of the Government in saying that it will ride out the storm with the people, as the Government keeps talking about riding out the storm with the people on the one hand but gives a free hand to these organizations to reap profits and squander public money extravagantly on the other. Speaking of the staff working in public organizations, as Mr LEE Cheuk-yan said earlier, we certainly should not put the blame on every one of them indiscriminately. We are not blaming all the employees; we are only blaming the senior executives of these public organizations for continuously reaping gains for themselves. While the lower-level employees have to work increasingly hard without any pay

rise, the senior executives receive several million dollars annually without doing anything. Under the circumstances, the morale of the employees working in these public organizations will naturally suffer gravely. We therefore hold that the Government should address this problem without delay. For the short run, it should follow the example of this Council and set up an independent commission to review the pay and fringe benefits of the senior executives of public organizations. At the same time, it should also enhance the transparency of the various public organizations and seek the approval of this Council before appointing any candidates as senior executives of these organizations. As for the long term, the Government should expedite its pace of democratization and enhance accountability to the public, thereby making the public organizations it owns answerable and responsible to the public as well.

Madam Deputy, I so submit.

**MR HENRY WU** (in Cantonese): Madam Deputy, I agree that the existing pay adjustment mechanisms for senior executives of statutory bodies be reviewed, and I propose that a stringent monitoring system be put in place to ensure the effective operation of the pay adjustment mechanisms. I must emphasize that this monitoring system must be truly stringent and effective, for a system that fails to exercise stringent monitoring and is not realistically enforced would be rendered virtually null and void.

Apart from the Hong Kong Monetary Authority (HKMA) mentioned by Members earlier in the debate, I think a stringent and effective mechanism for monitoring pay adjustments must also be set up for the Securities and Futures Commission (SFC), which plays a similar role to that of the HKMA.

Madam Deputy, while there is the Remuneration Committee under the SFC, members of the Committee are nevertheless appointed internally by the Board of Directors of the SFC. All members of the Committee, including its Chairman, Mr Daniel FUNG, and Deputy Chairman, Mr Henry FAN, as well as two other members, namely Mr Andrew SHENG and Mr Alan LINNING, are concurrently Executive Directors or Non-Executive Directors of the SFC. Conflict of roles will thus be inevitable, and this will prevent them from exercising independent judgement. Therefore, I think the Remuneration Committee must be made up of independents outside the SFC, rather than by internally appointed members, a composition which lacks credibility.

The composition of the Remuneration Committee aside, the practice whereby the board members of statutory bodies and their staff are subject to different pay adjustment mechanisms also warrants review. Take the SFC as an example. The Remuneration Committee made a decision in April 2000 to freeze the pay of all staff. But according to the figures in the 2000-01 annual report of the SFC, and from data analysis of the ranges of Directors' emoluments, the Executive Directors of the SFC were on the contrary given pay increases estimated at a rate of about 10%. It is even more shocking to find that the amount under Directors' bonuses/variable pay is three times as much as that in 1999-2000. Why are there such unreasonable differences? It is precisely because the pay and fringe benefits of SFC Executive Directors are determined by the Government, whereas the pay levels and pay adjustments of other staff are determined by the SFC on the recommendation of the Remuneration Committee. If we are asked to freeze our pay in order to ride out the storm together as the economy is not doing well, we will all take a sympathetic attitude and accept the reality. But the true picture is that those board members in the top management have not taken the lead to freeze their pay, and worse still, their pay is even increased substantially and they can pocket all benefits happily, whereas other staff have to tighten their belts. How would such an unfair pay adjustment mechanism that turns its back on the staff be convincing at all?

For these reasons, I support today's motion which calls for an expeditious review of the existing pay adjustment mechanisms of the HKMA and statutory bodies, and I propose setting up a highly transparent and truly stringent and effective monitoring system to ensure fairness in pay adjustments for staff of the statutory bodies, thereby enhancing the accountability of statutory bodies.

Madam Deputy, I so submit.

**MR JAMES TO** (in Cantonese): Madam Deputy, speaking of statutory bodies, especially when the Chief Secretary for Administration is here, I would very much like to tell the Government some of my feelings and observations, for I had been a board member of the Land Development Corporation (LDC) for six years, which is by no means a short period.

Having said that, I will try not to mention names. I only wish to tell Members some of my observations. For instance, the many factors that a board

member has to consider, whether board members of statutory bodies have enough alertness, the problems arising from the composition of the managing board, and so on.

First of all, I would like to speak on a number of points raised by Mr Albert HO about enhancing accountability. I would like to speak from my own experience. In statutory bodies, for example, can Policy Secretaries or Directors of Departments truly perform a monitoring role? Take the LDC as an example. I do not mean to blame the several Secretaries concerned. But all along, they had been handling things according to their own perception, thinking that they must consider how they could contribute viable ideas to the corporation or statutory body in the light of their own expertise. So, they tended to put more emphasis on the technical side of the issues. For example, on land issues, the Director of Lands may express more views; or when it comes to issues about community affairs or district development, the Secretary for Home Affairs or the Director of Home Affairs may speak more on them. But in general, they would consciously avoid expressing views from more macroscopic perspectives or in a broader vision, or exercising monitoring in the capacity of members of the public, or expressing other views on such issues as spending, or on a particular policy. Seldom did they consider things from these angles. I think this problem does exist. I do not know whether or not the Government, when appointing Policy Secretaries or Directors of Departments to the managing boards of statutory bodies, has given internal briefings or some sort of guidelines to the appointees, telling them that they must consider things from many different angles. If there are not such briefings or guidelines, it would never occur to them that they should indeed consider things from these angles. As a result, the desired purpose of providing in law that a number of Secretaries or Directors of Departments be designated as members of the board may not be achieved, for they do not think in the least that they have to perform these roles or functions. In that case, there would be big troubles indeed, because the Secretaries or Directors of Departments would fail to do the things that we expect of them, thus impeding communication among all sides.

The PRESIDENT resumed the Chair.

Policy Secretaries or Directors of Departments aside, generally speaking, it is often easier for other board members to be generous or lenient. On matters

pertaining to salary increase, for instance, it may not be easy for us, being Members of the Legislative Council, to be generous or lenient, for the Legislative Council has to be accountable to the public. It is often impossible for us to clearly explain the reasons and the intricacies involved. But overall speaking, I do feel a sense of mission. So, whenever a dollar or a cent of public money will have to be spent, I will consider the views of the public and will hold the purse strings tightly. If I have participated in the decision-making process before a policy is introduced, and although the minutes of meetings are kept confidential and the meetings are held behind closed doors, I will certainly consider this: If the committee of the next term of the Legislative Council would trace the responsibility of this committee one day, would what I had said as recorded in the minutes be answerable to the people and to my own conscience? If all the minutes of meetings would have to be made public — an extreme scenario though, and yet it is possible for a select committee of the Legislative Council to request access to all the papers — could I give a plausible explanation? Would my explanation be acceptable from the public's viewpoint? I do have this alertness, and I ask myself to be very alert to this.

However, other members may not have such alertness due to various limitations. In making appointments, the Government may not have imposed this requirement either; and it is often not easy to make appointments to the board. Candidates for appointment may not necessarily be confined to Members of this Council, and I am not saying that only Members of this Council can be appointed. But the Government must at least consider this point more when identifying suitable candidates. There are certainly people with this alertness. In the LDC, for example, I found that a couple of members who were not Members of the Legislative Council were very serious about the duties required of them by their appointment. I do not understand why they should consider each and every matter so meticulously. Some of them come from the business sector and they were very serious about everything. Yet, most of the other members were not as serious as they were. I do not know if this also happened on the managing boards of other statutory bodies.

The motion calls for consideration of another measure which concerns the determination of the pay of senior executives of statutory bodies. From the above experience, the appointment of the Chief Executive Officer is not subject to the decision of the board, but to that of the Chief Executive of the Hong Kong Special Administrative Region. As for the pay adjustments for other senior

staff (as this motion mentions senior executives), they are determined by the board. As a board member, I would make reference to the reports of surveys on pay adjustments by consultants when examining the relevant papers. The consultants may have obtained information from many similar statutory bodies, property developers, and so on, and information of this nature could be used for drawing a comparison with the LDC.

I remember when the Chief Secretary for Administration was the Financial Secretary, he had written to the LDC asking us to review the staff pay and benefits. We conducted the review in accordance with his instruction, but comparison was indeed difficult for certain posts. To be honest, for employees of private companies, they are strictly bound by an accountability system. That is, if they failed to reach the sales targets, they would not be offered another contract. To put it rudely, they can simply "get lost". But in the LDC or other public bodies, this system only works halfway. That is, that so-called "commercial" and very cruel accountability system does not apply to the senior management. But we must bear in the mind that many of the public corporations and statutory bodies are virtually "monopolies". The LDC, for instance, had no competitors at all. The LDC would acquire or resume land on its own. Profitability purely depended on the objective real estate market. Benchmarking or drawing comparisons is indeed not easy. So, some difficulties are involved here. Not many private companies operate in this manner. Concerning the pay of its senior executives, and when we look at it in the context of accountability, even its board members would not find it easy to apply this criterion to the senior staff for assessment, because it is difficult for a comparison or a specific line to be drawn. That said, this is not entirely unworkable. It is, in fact, possible if we take it as a commercial entity while at the same time factoring in these concepts to make a comparison.

Therefore, from the above analysis, I think if the Audit Commission and the Legislative Council can enhance their monitoring role over these statutory bodies, it would actually serve to step up vigilance on the part of board members in the course of decision-making.

**MR MICHAEL MAK** (in Cantonese): Madam President, first of all, I have to declare an interest. I am an employee of the Hospital Authority (HA), but not a senior executive.

The economic environment of late has been appalling and against this backdrop, the high pay and generous benefits enjoyed by the Chief Executive Officers (CEOs) of public bodies have consistently drawn criticisms from various sectors of the community. On the surface, this appears to reflect that people are jealous of the rich and disdainful of the poor. But if we take a closer look at the issue, we will find that the present monitoring by the Government over the mechanisms of public bodies for determining their pays and benefits is fraught with problems. So, it seems that criticisms from the community are not entirely groundless.

Let us not mention other public bodies. Just take the HA to which I am most closely related as an example. From information provided by the Government as cited by the press, the HA has the largest number of "super wage earners" whose annual salary is over \$3 million. On the other hand, there are 61 senior executives in the HA; and in the past year, the expenditure on remuneration for the senior management totalled as much as over \$181 million, which means that the annual remuneration for each was \$3 million-odd on average. It is indeed shocking that their remuneration is on such a high level.

Those in the top echelons of the HA are naturally rolling in money. But the front-line staff have been pouring out endless grievances because of a serious shortage of manpower resources. This inevitably gives the impression that the senior management is making a bundle at the expense of their subordinates. I am not saying that it is wrong for them to be given such a high pay. But the problem is that when the front-line staff are loudly complaining about understaffing, should those in the top echelons have regard for them and address their plights squarely? At least they should accept some measure of monitoring and build more transparency into their pay adjustments. Otherwise, more conflicts would take root between them. If this is allowed to go on, the morale of front-line staff would certainly be dampened to the detriment of service quality.

The CEOs of public bodies can increase their pay at will without being subject to any pressure. Officials of the relevant Policy Bureaux sitting on the boards should indeed be held responsible for this. Why do officials always pay no attention to CEOs determining their own pay and benefits through the board, and why do they have to defend them whenever the remuneration of CEOs is

questioned by Members of the Legislative Council? Would it be that the officials themselves have conflicts of interest and therefore they have to deliberately relax their monitoring over public bodies, so that they can also enjoy high pay and generous benefits once they are appointed to take up high positions in public bodies in future?

Senior executives of public bodies have demanded that their remuneration packages be comparable to private companies. When public bodies are making a profit, the CEOs certainly have good reasons to receive high pay or even ask for a share of bonus. However, I urge them not to forget that when these bodies are not performing well and are strongly criticized by the community, they must assume the greatest share of responsibility and must not be given a free rein as they are now under the existing mechanisms.

Madam President, people with vested interests will certainly rise in defence by all means whenever their interests are at stake, let alone people enjoying so fat a remuneration package. So, putting all the blame on the CEOs seems to be unfair. When the mechanisms can make their wallets fat, why would they say no to them? Therefore, any mechanism for determining the pay and fringe benefits of senior executives must have a high degree of transparency and must be duly monitored. This is most important. Otherwise, public bodies would eventually become uncontrollable independent kingdoms that can do whatever they like, as cautioned by many commentaries.

Madam President, the question of whether such "talents" as these CEOs are being rewarded with excessive pay and benefits is a matter of opinion, and it is indeed difficult to have an objective criteria. It is, therefore, absolutely appropriate to fasten the four "chains" onto the mechanisms for determining the pay of senior executives of public bodies as proposed in Mr Albert HO's motion.

Yet, I wish to add that one of these "chains" is actually in place, that is, the appointment of Policy Secretaries to the managing boards to play a monitoring role. But this very chain is made of scrap iron, for government officials on the managing boards are generally nothing more than rubber-stamps.

The addition of three other "chains" made of stainless steel as proposed in the original motion is well justified, particularly the one about requiring the

relevant bodies to "regularly report to the Legislative Council". Members of the Legislative Council will certainly act fairly and impartially. This will make the remuneration of the relevant officers greater value for money and ensure that they are truly accountable to the public.

Thank you, Madam President.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Mr Albert HO, you may now speak on the two amendments. You have up to five minutes to speak.

**MR ALBERT HO** (in Cantonese): Madam President, I would like to speak on Mr CHEUNG Man-kwong's amendment first. His amendment has deleted the names of the five public bodies from my original motion. As far as I know, he has consulted some Members of the Legislative Council, who hope that today's debate can provide more room for discussion, instead of focusing only on a number of bodies. Indeed, I have listened to the speeches of some 20 Members and some of them did mention other public bodies, including the Hospital Authority (HA), the MTR Corporation Limited, the Securities and Futures Commission (SFC), and so on. Therefore, I think broadening the scope of the motion to allow more room for discussion by Members is a good thing.

Yet, I wish to speak on one point, that is, the point raised by the Honourable Emily LAU about why the Hong Kong Monetary Authority (HKMA) is retained in the amendment. I am not particularly in favour of the HKMA. The HKMA is included for it is not a public body, but a government body which operates in a special manner. It is not monitored by the Legislative Council in many areas, particularly in the use of the Exchange Fund. The internal operation of the HKMA, such as its establishment, is not subject to monitoring by the Legislative Council. I, therefore, intentionally include the HKMA in today's motion for debate to put it on a par with other public bodies, so that it can be discussed together with issues of our common concern.

Mr LAU Kong-wah's amendment consists of several parts. The first is to replace the phrase "review the effectiveness of appointing Policy Secretaries to the managing boards of these bodies to play a monitoring role" in my original motion by "ensure that the Policy Secretaries appointed to the boards of management of these bodies discharge their monitoring duties effectively and are accountable to the Legislative Council". On the surface, these two phrases do not differ much from each other. But the specific difference is that — as Mr LAU Kong-wah has said clearly earlier on — he considers that the appointment of Policy Secretaries to play a monitoring role is already a fact that should not be questioned any more, and that the question lies only in how to make Policy Secretaries do a better job. However, I do not share this view. I think there should be room for us to ascertain whether the appointment of Policy Secretaries is the best option. As I have just said, Policy Secretaries are responsible for formulating macro policies of the entire bureau, and their work is very busy. Is it the best and the most appropriate option to appoint them to monitor the work of these bodies? I think this is worthy of discussion. We should not pre-set a definite answer. So, I think leaving out this part of the amendment can provide more room for discussion instead.

The second part of the amendment concerns part (b) of the original motion that deals with fringe benefits. Mr LAU Kong-wah does not only wish to review the pay of senior staff of public bodies, but also their fringe benefits. I think this part of his amendment is fine. But as far as we understand it, the term "pay" very often includes fringe benefits and so, this amendment may not be necessary. Nevertheless, Mr LAU deleted the phrase "draw reference from the pay adjustment mechanism of the Civil Service". I wish to clarify here that this phrase in my original motion does not mean that we must follow the pay adjustment mechanism of the Civil Service in its entirety. What I think is that we can draw reference from it in many areas. It is because many statutory bodies are basically no different from quasi-government bodies in terms of their duties and functions. They are not entirely commercial in nature. Examples include the SFC and the HA. Their operations are indeed not entirely commercial in nature. Rather, they are very similar to government bodies in many aspects. I think it is, in fact, appropriate to draw reference from the pay mechanism of the Government. That said, does it mean that the Government's pay standards would have to be adopted ultimately? Is it necessary to make some additions or deletions? All these are open to discussion.

On the amendment to part (d) of the original motion, that is, the part on reporting to the Legislative Council, Mr LAU Kong-wah proposes that the original motion be amended as "the committees and subcommittees of the Legislative Council may require the chairpersons and chief executive officers of these bodies to attend their meetings and answer questions from Members". I think since we naturally have this power, why should it be necessary to add in "may require"? My original motion requires these bodies to report to the Legislative Council, and this actually builds in a greater degree of clarity. Therefore, we will abstain in the vote on Mr LAU Kong-wah's amendment. I urge Members to support the amendment of Mr CHEUNG Man-kwong.

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam President, I am most grateful for Honourable Members' views and comments on today's motion. I have sensed the strength of Members' feelings.

There are over 200 statutory bodies in Hong Kong. Each of these bodies is set up with its own unique purpose, and most of them operate with some forms of government funding. Some of them are required to work on prudent commercial principles. Others are run as government subvented bodies. Yet others are incorporated by statute to provide charitable services. There are also a large number of statutory boards that deal with appeals under different ordinances.

Indeed, it is a distinctive feature of the Hong Kong system of governance that we encompass such a vast number and wide range of statutory bodies. They are detached from the government structure and machinery, and are given the autonomy that they need to operate, many of them in a business environment. In the light of their very different functions, nature of work and funding arrangements, each statutory body has its own governing board, terms of reference and *modus operandi*, as defined under its governing statute. The system of governance of each statutory body had been carefully scrutinized by this Council before its governing statute was enacted by this Council.

The Honourable Albert HO named six organizations in his motion. These six alone suffice to demonstrate the very diverse nature of the roles and functions of our statutory bodies. The Kowloon-Canton Railway Corporation (KCRC) is a publicly owned corporation. Like the Airport Authority (AA), the KCRC is required by law to operate on prudent commercial principles.

Similarly, the Urban Renewal Authority (URA) is to operate along commercial lines. The Hong Kong Housing Society (HS), however, is entirely different. It was founded as an unincorporated charity. Although it is now incorporated, it is a non-profit-making private organization with a social mission and still enjoys charitable status. The Mandatory Provident Fund Schemes Authority (MPFA) and the Hong Kong Monetary Authority (HKMA) are also different. While both are regulators, the former has an independent corporate status, and the latter is a legal person appointed by the Financial Secretary and works as an agency of the Government.

The amendment moved by the Honourable CHEUNG Man-kwong covers a much wider field. For the reasons that I have just stated, it will be very difficult, if not impossible, to deal with all 200-odd statutory bodies coherently in one open debate. I shall, therefore, use the six singled out in the original motion to illustrate how statutory bodies are made accountable for their operations.

There are, of course, standard procedures in place to hold these statutory bodies accountable. They include:

- (a) specific legal provisions governing their operations and ensuring their compliance;
- (b) government representatives sitting on their management boards;
- (c) the requirement to submit regular reports to the Government or, in the case of the HS, to its governing body; and
- (d) the requirement to submit audited annual accounts to the Government and to have them tabled in the Legislative Council and make them available for public inspection.

Let me now turn to the subject of this debate, that is, the pay adjustment mechanisms of these bodies, and the measures proposed by Mr Albert HO and other Members to improve the ways these bodies use public funds and to enhance their accountability.

All the six statutory bodies mentioned in the original motion have either an ex-officio chairman or senior officials sitting on their management boards.

These government representatives are not confined to Bureau Secretaries. Public officers sitting on the management boards work with their non-government counterparts to closely monitor the operation and the decision-making process of these bodies. Official board members offer advice from the Government's policy perspectives as well as on public aspirations. Their input enables the statutory bodies to give due regard to the wide public interests in pursuit of their organizational goals.

The appointment of public officers to the management boards aside, the Government also appoints the head of the executive team of most of these bodies. For example, the Managing Directors of the MPFA and the URA, and the Chairman-cum-Chief Executive of the KCRC are appointed by the Chief Executive of the Hong Kong Special Administrative Region (SAR); the Chief Executive of the HKMA is appointed by the Financial Secretary; the Chief Executive Officer of the AA is appointed with the approval of the Chief Executive. As regards the HA, which is a private charity as distinctly different from the other five public bodies, the Executive Director is appointed by the Executive Committee of the HS of which the Secretary for Housing is a member. We have been generally content with the existing arrangements, which strive to exercise a level of monitoring commensurate with the high degree of autonomy conferred in statute upon these bodies, for the discharge of the executive functions vested in them. What is perhaps more important is that the total packages of remuneration of the Managing Directors of the MPFA and the URA, the Chief Executive Officer of the AA and the Chief Executives of the KCRC and the HKMA are broadly consistent with the prevailing market rates for their counterparts in the private sector. More specifically, for example, we should ask ourselves whether the Chief Executive of the KCRC is being paid more, more than the chief executive of a large commercial public transport operator in Hong Kong, or whether the Chief Executive of the HKMA is being paid more, more than the chief executive of a reasonably-sized bank in Hong Kong. The answer is that they are not.

Mr Albert HO suggests that the Government should consider drawing reference from the pay adjustment mechanism of the Civil Service and devise for these bodies a system which is clear, transparent and acceptable to the public. For organizations which receive recurrent subvention from public funds, the Government's policy is that, as a general rule, the terms and conditions of service of the staff concerned should not be better than those provided by the Government to comparable grades in the Civil Service. Pay adjustments of these subvented bodies follow primarily those of the Civil Service.

As to the statutory bodies, as I have stated in my reply to the Honourable LAU Chin-shek's question last week, the remuneration for staff in these organizations is set to reflect the different management structures in these organizations, the level of responsibilities, and the respective areas of expertise and experience required. In overall terms, the remuneration and its adjustments should be in line with the respective markets in which these organizations compete for human resources. The remuneration should be able to attract and retain staff with the appropriate calibre, experience and expertise. Just as the remuneration policy of these bodies cannot be compared with that of the Civil Service, neither is the pay adjustment mechanism of the Civil Service an appropriate reference point for them to draw on.

Nevertheless, these organizations do conduct regular remuneration surveys of their respective markets in which they compete for human resources. The remuneration packages for senior management staff are determined having regard to the prevailing market trends. The underlying philosophy is that they must be able to attract and retain staff with the appropriate experience and expertise to operate in their respective markets. In addition, general information on the remuneration of senior management staff will continue to be disclosed in the respective annual reports of these organizations.

Regarding the proposal to subject these bodies to the scrutiny of the Director of Audit, let me first recapitulate for Members the guidelines on the scope of the Director of Audit's value for money studies, as agreed among the Public Accounts Committee, the Audit Commission and the Administration. According to the guidelines, organizations subject to such studies should include:

- (a) any person, body corporate or other body whose accounts the Director of Audit is empowered under any ordinance to audit;
- (b) any organization which receives more than half of its income from public monies; and
- (c) any organization the accounts and records of which the Director is authorized in writing by the Chief Executive to audit in the public interest under section 15 of the Audit Ordinance.

In accordance with these guidelines, many of the statutory bodies are already subject to the Director of Audit's scrutiny. The HKMA is an example.

The Chief Executive has also appointed the Director of Audit as the external auditor of the HKMA to scrutinize the accounts of all transactions of the Exchange Fund.

For the KCRC and the AA, the Government does not fund their operations and they are required by law to operate according to prudent commercial principles. Generally speaking, their recurrent revenues come from the charges and fares paid by their customers and not from the public purse. Like the commercial entities, they are required to generate sufficient income to meet their operating expenses. They are required to repay debts and to provide reasonable returns. Although they received capital injections from the Government when they were set up to cover part of the non-recurrent expenses, they also have to raise considerable amounts of funds from local and international capital markets to pay for their major expenditures in this regard. Therefore, these bodies need to establish a good reputation amongst the financial community and international credit rating organizations. They need to operate with a high degree of financial autonomy and commercial sensitivity in order to achieve this objective. If we stipulate that the general management of these organizations should be monitored by the Director of Audit through value for money studies which will be eventually open to the public and subject to political debate, that will be a departure from that objective. Some Members might not agree to this argument, but we know that prudent bankers — none are present at this moment — and financial syndicates hold the same view.

The URA is required to operate along commercial lines and is expected to be self-financing in the long run. Similarly, the MPFA, apart from a capital injection from the Government upon its establishment, does not receive any recurrent funding from the public purse. As for the HS, the Government would grant land at concessionary premium or low interest loans only for certain subsidized specific housing projects. It does not receive recurrent subsidy from the Government. These organizations are, therefore, not subject to the scrutiny of the Director of Audit.

Notwithstanding the above, they have all set up their own internal audit mechanisms to ensure the proper use of resources. They are also required to appoint independent external auditors. The audited financial statements, together with the auditors' reports, are either tabled in this Council or published and made available to the public. Through these measures, we believe that these safeguards are comparable to any prudently managed, publicly listed

commercial entities. They should ensure that the bodies concerned utilize their resources properly.

Although statutory bodies are entrusted with certain executive powers, policy responsibility remains firmly with the relevant Policy Bureaux. Statutory bodies performing public functions are held accountable, through the Bureau Secretaries, to the Legislative Council in respect of their operations, services and efficiency. Policy Secretaries report to this Council regularly on the affairs of these bodies, and answer questions raised by Members. My attendance this evening in response to Mr Albert HO's motion and other Members' views is testimony to this system of accountability.

That aside, senior management staff of these bodies often attend meetings of Panels of this Council on request to brief Members on subjects of interest or public concern. A number of them submit their audited reports to this Council through the Administration. This interface with the Legislative Council has worked well and will continue. In addition, these bodies have also taken steps to enhance the transparency of their operations. They include publishing annual reports, setting performance pledges and targets, issuing press releases on their major decisions, maintaining updated websites and publishing information on their activities on a regular basis.

Madam President, the some 200 statutory bodies that we now have were established at different points in time under different sets of circumstances. The governance of these bodies, the functions and responsibilities of their senior management and their overall systems of accountability are set out in the relevant ordinances to reflect their unique circumstances. Given the diverse nature of their functions, it would be neither practicable nor desirable to attempt to mandate one size fits all, government salaries for all or one framework for all the different practices and arrangements as regards pay adjustment mechanisms and system of accountability. The current checks and balances built into the system have, on the whole, worked well. But no system is perfect, and we must also move with times. My colleagues and I have listened very carefully to Members' views. We will mull over them, and we will search for sensible improvements. Meanwhile, the Administration's representatives sitting on the statutory bodies, particularly those operating on prudent commercial principles, will exercise their highest vigilance over any decision relating to the remuneration of these bodies' senior executives. Thank you.

**PRESIDENT** (in Cantonese): I now call upon Mr CHEUNG Man-kwong to move his amendment to the motion.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, I move that Mr Albert HO's motion be amended, as set out on the Agenda.

**Mr CHEUNG Man-kwong moved the following amendment: (Translation)**

"To add "public" after "the Hong Kong Monetary Authority and statutory"; and to delete ", including the Kowloon-Canton Railway Corporation, the Mandatory Provident Fund Schemes Authority, the Hong Kong Housing Society, the Urban Renewal Authority and the Airport Authority,"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHEUNG Man-kwong to Mr Albert HO's motion, be passed.

**MR ERIC LI** (in Cantonese): Madam President, may I raise a point of order, please?

**PRESIDENT** (in Cantonese): Yes, please.

**MR ERIC LI** (in Cantonese): Madam President, earlier on, Dr LO Wing-lok has spoken on behalf of several Members. Judging from the many different views we have heard today, one of the possible situations is that if Mr CHEUNG Man-kwong's amendment should be passed, at least a part of Mr LAU Kong-wah's amendment could not be moved. Upon consulting the "cue card" again, we feel that one of the proposals put forward in Mr LAU Kong-wah's amendment contains an important point we wish very much to retain and that is the part on "fringe benefits". This is because fringe benefits, which comprise different forms of bonuses and housing allowance, account for a rather large proportion of an employee's remuneration. I hope the President will give us her advice or make some clarification for us. If Mr CHEUNG Man-kwong's

amendment is carried and if Mr LAU Kong-wah can still move the relevant part of his amendment to the amended motion, I believe many Members who have intended to abstain from voting, as suggested by Dr LO, may perhaps vote for Mr CHEUNG Man-kwong's amendment. I hope the President will give us some advice in this respect.

**PRESIDENT** (in Cantonese): Honourable Members, if Mr CHEUNG Man-kwong's motion is carried, you may still vote on Mr LAU Kong-wah's amendment afterwards. This is because Mr CHEUNG Man-kwong's amendment relates to the first half of Mr Albert HO's motion, whereas Mr LAU Kong-wah's amendment concerns parts (a) to (d) of the original motion. If you read through the Script which Mr Eric LI referred to as the "cue card" just now, you will see that you can vote separately on the two amendments. Is that clear to all Members?

Mr IP Kwok-him, do you have a point of order?

**MR IP KWOK-HIM** (in Cantonese): Madam President, may I seek your leave for this meeting to suspend for five minutes, so that we can discuss how we should vote?

**PRESIDENT** (in Cantonese): The leave sought by Mr IP Kwok-him is granted. It is reasonable to allow Members to consider clearly before casting their votes. I now suspend the meeting for five minutes. The meeting will resume later.

8.15 pm

Meeting suspended

8.20 pm

Council then resumed

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr CHEUNG Man-kwong to Mr Albert HO's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): I now call upon Mr LAU Kong-wah to move his amendment.

**MR LAU KONG-WAH** (in Cantonese): Madam President, I move that Mr Albert HO's motion, as amended by Mr CHEUNG Man-kwong, be further amended by my amendment, as set out on the Agenda.

**Mr LAU Kong-wah moved the following amendment: (Translation)**

"To delete "review the effectiveness of appointing Policy Secretaries to the managing boards of these bodies to play a monitoring role" after "(a) to" and substitute with "ensure that the Policy Secretaries appointed to the boards of management of these bodies discharge their monitoring duties effectively and are accountable to the Legislative Council"; to delete "draw reference from the pay adjustment mechanism of the Civil Service and" after "(b) to"; to add "and fringe benefits" after "devise for these bodies a pay"; and to delete "require the senior management of these bodies to regularly report to the Legislative Council" after "(d) to" and

substitute with "provide that the committees and subcommittees of the Legislative Council may require the chairpersons and chief executive officers of these bodies to attend their meetings and answer questions from Members". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr LAU Kong-wah's amendment to Mr Albert HO's motion, as amended by Mr CHEUNG Man-kwong, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Mr Albert HO, you may now reply and you have two minutes 28 seconds.

**MR ALBERT HO** (in Cantonese): Madam President, I am grateful to the 25 colleagues who have spoken on my motion and commented on the many deficiencies and even irregularities of the existing public bodies and the Hong Kong Monetary Authority. In his reply, the Chief Secretary for Administration said at the outset that he sensed the strength of our feelings. Regrettably, as I

continued to listen to his speech, I found that while he could sense the strength of our feelings, his answer was that we are swayed by emotions, that we appear to be hurling criticisms arbitrarily, and that those are not problems at all. From his overall reply, the Chief Secretary for Administration appeared to have concluded that there is no problem now, that all checks and balances have worked well, and that their pay levels are on a par with the market rates and are therefore fair; and it seems that there is no sign whatsoever showing that anything warrants review, not to mention changes.

I found this utterly disappointing. The Government seems to think that the many feelings and views (which, I believe, also reflect many public opinions) shared by the 20-odd or even more Members including those who have not spoken today are totally unfounded and totally devoid of rational justifications.

Moreover, the Chief Secretary for Administration mentioned just now that there are over 200 statutory bodies altogether and so, how can all of them be covered in a review? But, Madam President, please bear in mind that first, we are not saying that all the 200-odd statutory bodies should be covered. We only focus on the public bodies. Public bodies have the responsibility to serve the public, and this is most important. Second, we are not suggesting that small-scale organizations similar to private companies should be reviewed. Although the six organizations in my original motion will be ultimately deleted in the motion to be passed today, the mention of these six organizations can be very useful, for it can illustrate what we are trying to say. These organizations are common in that they are all funded by public money, and they all rely on capital injection by the Government and many forms of government support. They also rely on many powers conferred on them by law, with which they can often enjoy special status in their operation in the market. So, how can these organizations be taken as equivalents of commercial entities? Therefore, I hope that after we have put across this message today, the Government will really launch a review immediately. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Albert HO, as amended by Mr CHEUNG Man-kwong and Mr LAU Kong-wah, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Second motion: Reviewing the Government's tendering system.

## **REVIEWING THE GOVERNMENT'S TENDERING SYSTEM**

**MR ABRAHAM SHEK:** Madam President, I move that the motion, as printed on the Agenda, be passed.

Between 1999 and 2000, there was a spate of public housing and sewage disposal projects which were shoddily constructed. These projects have seriously weakened public confidence in public works. Both the public and the professionals have pointed out that apart from inadequate supervision and a subcontracting practice, a tendering system which gave undue emphasis on price is a major cause to the problem.

The objective of the current tendering system is to be open, fair and to get the best value for money. But in actual practice, contracts are commonly awarded to the lowest bidders. Cut-throat competition among contractors, eager to secure a tender, has resulted in their offering extremely low bids, causing a serious decrease in their profit margins and often losses, too. Quality of work has suffered in the process. In a worse case scenario, irreversible damage has occurred. A recent case of substandard work in a Sha Tin public housing project has led to the demolition of two fully-built housing blocks.

Under enormous public pressure, the Hong Kong Housing Authority (HA), in late 2000, reviewed and revised its tendering system for its building and

consultancy projects. For selection of consultants, the split between the technical and fee scores was revised from 50:50 to 70:30, and for projects demanding a high degree of creativity in design, the split was revised from 70:30 to 80:20.

On the selection of contractors, the HA agreed to exclude exceptionally low bids on the ground that the tenderer's ability to deliver might be doubtful. But the HA did not make any attempt to revise its marking scheme in which a 80:20 score weighting between the price and quality is currently used. While admitting that irrational price bidding might occur with the current weighting system, the HA insists that the weighting system can still recognize the capability of building contractors.

The head of the Housing Department, Mr Tony MILLER, has recently openly admitted that a substantial majority (up to 98%) of public housing contracts were awarded to the lowest bidders. This has convinced the public that a lot more need to be done to improve the evaluation of bids for public housing projects.

In the case of public works contracts, except for high value, complex projects, tenderers with the lowest bid will usually be selected, provided they fulfill all other prequalification requirements of relevant technical competence and financial capability. Under such a system, it is also possible for eager tenderers to submit extremely low bids which fail to make adequate provisions to meet all statutory and tender requirements.

On occasions where quality is of paramount importance and must be taken into account in the tender evaluation (for example, works contracts for high value or prestigious projects, or works which are technically complex and sensitive, are subject to very tight schedules), a separate marking scheme which gives weight to both quality of contractor and price is introduced. However, price is still given a weighting of 80% while quality is only given a weighting of 20% in the bid evaluation.

In evaluation of bids for public works consultancies, quality is the prime criterion. In a "two-enveloped system", the selection of consultants is determined on the basis of assessment of technical merit combined with cost. Weightings between technical and price will be appropriately adjusted on an individual basis according to the level of technical input. Normally, weightings for:

- (a) multidisciplinary projects that require special emphasis on technical input are 80% technical: 20% price; and
- (b) technically straightforward consultancies are 60% technical: 40% price.

Consultancies will be awarded to tenderers with the highest total scores. It is considered that the consultants' technical capabilities can be better reflected in the above-mentioned marking system. However, there are still inadequacies in such a tender evaluation system. For example, in one case as earlier pointed out by the Honourable LAU Ping-cheung, an established consulting company offered an unprecedented \$1 bid and successfully won a contract to study the development potential of a Tung Chung site. This could be an extreme case, but the Government should increase communication with tenderers and seek clarification from those who offer substantially underpriced bids. Without any acceptable explanation, the Government might consider following the HA's practice of excluding unrealistic low bids.

Currently, past performance of consultants and contractors is not given any weight in bid evaluation. Past performance records are only considered in the initial shortlisting stage to select qualified candidates to submit a bid. In other words, consultants or contractors with outstanding past performance do not enjoy any advantage in the bidding process. Under such an arrangement, there is no incentive for the consultants or contractors to perform better than the prequalification requirements. In the long term, this would not help to upgrade the professional standard of the industry.

To correct this unhealthy situation, an apparent solution is to introduce or increase the weightings of a quality score in the assessment of a bid. Under a quality-led procurement strategy, appropriate weightings should be given to quality attributes, including design and technical capabilities, site safety records and environmental performance, past performance, and so on.

A procurement department of a government agency has adopted a new strategy in the tender selection exercise. In early 2001, the Government Property Agency (GPA) awarded three property management services contracts on the basis of a new marking scheme which gave a weighting of 70% on quality and 30% on price. Before that, only 30% weighting was assigned to the quality score. I highly appreciate the GPA's effort to address the public's concern to

quality. Other procurement departments in the Government should consider seriously adopting the GPA's new approach in their marking schemes.

I consider it crucial for procurement departments to increase transparency of tender evaluation. Tenderers who lose a contract should know why they failed to win the contract. The Government might consider debriefing the consultants and contractors concerned to improve their competitive performance in future procurement exercises.

The Government might also consider introducing into the assessment "design and build" approach for general contracts. This practice has already been introduced in selected public works contracts and selected public housing projects.

Early this year, Mr Henry TANG, in his report on the construction industry, has addressed various problems relating to the existing tendering system. Since the problems are serious and must be coped with urgently, I urge the Provisional Construction Industry Co-ordinating Board (which is also chaired by Mr TANG) to set up a task force to work out an action plan to implement the recommendations in the report and submit regular progress reports to this Council.

The Government has repeatedly stressed that all procurement departments should adopt the spirit of giving appropriate weightings to quality in bid evaluation. But clearly, there is discrepancy between the spirit and actual implementation. The lowest bid approach, although straightforward and objective, does not always deliver a high quality product. Quality tends to suffer when money is tight.

With these remarks, Madam President, I beg to move. And I hope that my colleagues will support me. Thank you.

**Mr Abraham SHEK moved the following motion:**

"That, in view of the repeated occurrence of substandard construction in public works, this Council urges the Government to review and improve the tendering system for all its contracts, especially the lowest-bid selection criterion, thereby ensuring government contractors' quality of work."

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

**MR KENNETH TING** (in Cantonese): Madam President, over the past few years, a series of substandard piling problems in public housing and construction scandals has been uncovered, with tremendous repercussions in society. Many people have pointed out that the substandard construction in public works is to a large extent due to the lowest-bid criterion in the tendering system. I believe this question warrants our attention.

Apart from the problem with the tendering system, we should also pay attention to the unethical practices in the construction industry in recent years. Some contractors take advantage of the loophole of the lowest-bid criterion to secure contracts and engage in fraud afterwards by cutting corners. This not only damages the reputation of the construction industry, but will also cause serious consequences once structural problems occur, threatening the lives of the residents. In my view, these unethical practices should be condemned.

While the Government has somewhat tightened the criteria for awarding works contracts after the series of construction problems, giving greater weighting to technical attributes, it still basically applies the lowest-bid criterion. In particular, in bid evaluation, the Housing Authority (HA) gives a weighting of 80% to price and just 20% to technical merit, obviously laying undue emphasis on price.

I am puzzled why the HA and the Housing Department have failed to adopt adequate measures to close the loophole of the lowest-bid criterion after the series of scandals involving substandard piling works in public housing.

To avoid the recurrence of construction scandals and jerry-building, apart from considering technical capability in addition to price in bid evaluation, we should also make an overall assessment of the qualifications of tenderers and the status of their operation, such as whether their finances are sound. In recent years, due to cut-throat competition, companies have tried to win bids by lowering prices. Some companies may even offer "super-low" prices that are lower than cost. However, we must seriously consider whether there are really such "big bargains". Maybe these companies are already having financial

problems and are trying to win contracts by offering "super-low" prices in order to keep the companies afloat. After winning the bids, in order to cut losses, they will further suppress prices in subcontracting the works. The exploited subcontractors may do shoddy work in accordance with the price. The series of construction scandals in recent years is a result of this.

Many examples have shown that after winning the bids with low prices, some companies with a good track record would leave the works unfinished because of their own financial problems or cut corners to "turn losses into gains". While government officials think they could get "a roasted goose leg by paying the price of bean curd", contractors deliver work of the quality of "soya bean residue".

Thus, the Liberal Party suggests that while evaluating bids, the Government should make an overall assessment instead of just considering the price. After awarding the contracts, it should also strictly supervise the construction works to preclude jerry-building and ensure that the works are undertaken according to the tender specifications. It should pay particular attention to the subcontracting of works to avoid substandard construction as a result of the contractors lowering the subcontracting prices.

In the Liberal Party's view, the Government should expeditiously implement the recommendations made by the Construction Industry Review Committee, chaired by Mr Henry TANG, on the operation of the construction industry and construction malpractices. They include the suggestion for the construction industry and the Government to set up separate co-ordinating bodies to resolve the lack of co-ordination and the confrontation between the construction industry and the Government over a long time. In addition, a registration scheme should be set up to regulate the subcontracting of works and the quality of construction workers comprehensively. Only by revamping the tendering system and removing the unethical practices in the industry can we prevent the problems of short piling and cheating on materials from recurring.

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

**MR CHAN KAM-LAM** (in Cantonese): Madam President, every year, Hong Kong puts tens of billions of dollars into construction works. Unfortunately,

due to flaws in the present tendering and contracting-out system, several cases of substandard construction have occurred over a period in the past, exposing the problems that have long existed in Hong Kong's construction industry. Early this year, the report released by the Construction Industry Review Committee made more than 100 reform recommendations, including the review of the tendering system and the lowest-bid selection criterion. However, it seems that the Government has failed to actively implement the relevant recommendations in the report.

Early this year, the Works Bureau introduced the Public Works Contractors' Performance Index System to assess the performance of contractors over the past three years. But as we know, in bid evaluation, the Works Bureau only uses this mechanism to screen out poor performing contractors. After contractors have qualified in the initial stage, the Government will only consider the factor of price in bid evaluation, and no longer consider their past performance. Such a prequalification exercise is to a certain extent linked to the lowest-bid criterion.

According to the present rules on the provision and procurement of supplies, except for more complex and high value projects, the Government generally selects contractors on basis of the lowest-bid criterion. This seems to be less desirable than the Housing Authority (HA) practice of including the quality of tenderers in the marking scheme when selecting contractors.

The Democratic Alliance for Betterment of Hong Kong (DAB) does not think there is a great problem with the lowest-bid criterion. After all, should we forget the principle of using public funds prudently and award contracts to the highest bidder instead? As far as I know, many companies with inadequate experience have made bids below cost in order to acquire the relevant experience as a stepping stone to winning other contracts. There is nothing wrong with such a long-term investment, and the contractors who won the bids did not run into any problems afterwards. However, we should emphasize the need to establish an effective regulatory mechanism as support, so that the system would not be abused by unscrupulous businessmen and to prevent further cases of jerry-building because of low price.

Madam President, in the DAB's view, apart from the lowest-bid criterion, a more serious problem with the Government's present tendering system is the

problem of multi-layered subcontracting. For example, in the tendering process of the HA, both price and the quality of contractors will be considered. There is also a list of qualified contractors. However, after the contractors win the bids, they frequently subcontract the works. Sometimes, one project may be subcontracted five or six times. The subcontractors that undertake the project in the end are in fact not qualified for bidding. The Government has no way to regulate this, so that problems arise in many projects in the end.

Madam President, in reviewing the tendering system, the Government must address the problem of multi-layered subcontracting seriously. It should consider restricting the number of layers of subcontracting a project or even specify that the works can only be subcontracted to qualified contractors. At present, when the Government and the HA consider including contractors in the list, one of the criteria used is the number of bids for government or HA projects won by the relevant contractors in the past. This excludes many small contractors from submitting bids. In the DAB's view, the Government should consider changing the present criteria. In selecting the contractors, apart from price and experience, it should also consider their financial capability and whether they have qualified architects and adequate construction personnel and equipment, so that contractors who have not undertaken any public works may also submit bids for works.

Madam President, some may perhaps think that the lowest-bid criterion would ensure that the Government would receive services best value for money. However, it is my view that the Administration should reject tenders with unreasonably low bids. The first paragraph of Chapter 5 of the Report of the Construction Industry Review Committee counters the first argument above: "We must recognize that best value does not necessarily equate with the lowest initial tender price, but also encompasses various quality considerations as well as longer-term benefits such as lower life-cycle costs."

Madam President, due to the economic downturn in recent years, the Government will continue to inject huge funds into various infrastructural projects to stimulate the economy. In the DAB's view, it is imperative for the Government to reform the tendering system.

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

**MR ALBERT CHAN** (in Cantonese): Madam President, the tendering system in Hong Kong has led to many problems, such as substandard work and short piling, which some Members have mentioned earlier. The spate of problems that often crops up after the completion of works shows that the works fail to meet specifications and that their quality is substandard. Many works are suspended halfway because the relevant companies have pulled out. This results in delays which affect the public. Roads are dug for six months, so that vehicles cannot pass through, thus seriously affecting the community. These delays incur additional expenses. The Government has to use additional public money to settle claims, which also put enormous pressure on the projects. Recently, after the completion of the Airport Core Programme projects, the claims also amount to hundreds of millions of dollars. The claims related to the sewage disposal scheme have become a joke and a scandal in the Hong Kong engineering sector.

Sometimes, the award of works contracts by tender end up in bizarre scenarios. The contracts won are not carried out by the bidding contractor, but are subjected to multi-layered subcontracting and carried out by the third, fourth, fifth or even the sixth layer of subcontractors. As some Members mentioned just now, some works are ultimately taken over through multi-layered subcontracting by companies that have been removed from the Government's list. Some contractors do not have to do any work at all after winning the bids. In some works contracts I have seen, the contractor who won the bid subcontracted the works to another company. The contract stipulates that the contractor who won the bid will get 17% as supervision fees, while the subcontractor has to complete the works in accordance with the tender contract. The contractor who won the bid does not have to do any work, that is to say, after winning the bid, the recognized contractor will earn 17% of the fees. There are numerous such examples and the Government is well aware of these problems. However, the Government seems to look on with folded arms. Due to the numerous problems arising from multi-layered subcontracting, industrial actions take place all the time, in Tin Shui Wai today and in Kwun Tong tomorrow. What frequently happens is that the subcontractor fails to pay wages to the workers punctually, so that the Labour Department has to step in. In fact, so many problems arise because there is an enormous loophole in the whole tendering system and the relevant rules.

In terms of the tender criteria, when it comes to consultancy contracts, reference is often made to the company's track record and past performance. In

time, the more contracts some big contractors have carried out, the easier it would be for them to win new contracts, since they have track records, while new companies do not stand a chance. As a result, the consultancy contracts in Hong Kong are always won by the same three or four companies. This constitutes a big problem. Local small and medium consultants have no chance of winning large government contracts usually because they have no track record, and are therefore excluded from the list of candidates.

Another major problem with tendering is the lack of transparency. Sometimes, the tender criteria are not specified. A few days ago, we asked the Government in a meeting about its criteria of bid evaluation, and the Government was reluctant to answer. For instance, we asked about the main tender criteria and bid evaluation criteria for the fourth harbour crossing and the weightings in the marking scheme. The Government refused to disclose them. Even the tenderers may not know. Such kind of semi-black box mode of operation is extremely unhealthy, for it is the relevant officials who will decide in the end. Others will not know if there is any particular agenda or if there are any ulterior motives behind. The relevant officials have total control. In a tendering system, such practices are totally unacceptable.

Another example of the lack of transparency is that tenders are rejected after they are submitted. A simple example is the tendering process for the river trade terminal in Area 38 of Tuen Mun, in which the tenderer offered the Government an extra \$1 billion. But the Government eventually rejected the tender on account of its traffic scheme. In fact, the relevant company had commissioned a consultant to undertake a study. However, the Government laid down the content of the works itself and did not specify its requirements during the bidding process. This has cost taxpayers \$1 billion. The company is now glad that it was not selected. Otherwise it may suffer losses in the project.

These examples clearly show that there are many problems in the tendering process. The tendering system is also quite ridiculous. I wonder why single tender is called tender at all. Single tender is not tender. It runs against principles. Earlier, in the last item of the Agenda, we talked about the statutory bodies. Single tender was used in the Hung Hom development of the Kowloon-Canton Railway Corporation. It is against all principles of fairness, openness and rationale and is totally unacceptable. I hope the Government will stop talking about using the form of "single tender" in committee meetings from now on. Single tender is a private offer and has nothing to do with tender.

I hope that in reviewing the tendering and bidding system, the Government could improve the existing system by laying down and disclosing the tender criteria and the bid evaluation criteria before the tender exercise starts. In case anyone feels aggrieved at the results of tender evaluation, it should consider establishing a more reasonable system instead of letting a few people make decisions behind closed doors. In the latter case, even if anyone feels aggrieved, he will not have any channels to complain.

The Government should also consider other ways of bid evaluation and not just apply the lowest-bid criterion in the tendering system. There are several methods of bid evaluation. The Government should consider a quality-led approach. For instance, the Government could require tenderers to submit two envelopes, one containing the proposal and content of the tender, the other containing the price. The Government could first evaluate the envelope containing the relevant proposal and content of the tender. After selecting a tenderer of the highest quality by opening the quality envelopes, it can now open the other envelope submitted by the selected company containing its price. If the price is within the predetermined acceptable range, the company should be selected. Such a tendering system based on quality could eliminate many problems of poor quality of construction work because of low prices. I hope the Government will consider this suggestion. Thank you, Madam President.

**DR RAYMOND HO** (in Cantonese): Madam President, the Government's tendering system for public works has always been criticized, while its lowest-bid selection criterion has resulted in problems with the quality of work. In my view, the Government should review the existing tendering system to ensure the quality of future construction projects and to ensure steady employment opportunities.

As we all know, cost and quality are often linked. The lower the cost, the less we can guarantee the quality and the more likely problems will arise. If a garment is badly made, it will at most bleed or shrink. But if a construction project is substandard, it may lead to loss of lives and limbs. The price is huge indeed. In fact, we often hear news about buildings becoming dangerous buildings because of jerry-building by developers in an attempt to lower cost.

Apart from causing problems in the quality of work, the lowest-bid criterion in the tendering system also leads to unemployment. In order to win

the bids, tenderers often submit exceptionally low bids. In the long term, this will lead to cut-throat competition, driving some developers and contractors out of business. In recent years, the construction industry has been in a state of depression. According to the unemployment figures for the third quarter, the unemployment rate is highest in the construction industry. It is estimated that one of the reasons for this is the closure of construction companies. If the Government can fully review the present lowest-bid criterion in the tendering system, it may be able to help relieve unemployment in the construction industry.

Under the present tendering system for public works, apart from the tender price and the financial merits of the tenderers, the technical merits in the tender documents will also be considered. For instance, in the Sha Tin to Central Link railway programme, the Government will consider technical factors such as land recovery and land use. If tenderers possess higher technical capabilities, they will receive a higher score on the technical side. Objectively speaking, this is desirable. Technical and financial capabilities are two major criteria used in the evaluation of tenders in other construction projects. However, after evaluating the tenders, the Government does not announce the scores received by the tenderers. This is unfair to those who have lost the bids. In my view, the Government should announce the scores received by the tenderers in the announcement of the results of tender.

The problems with the tendering system for public works are long-standing. The lowest-bid selection criterion is particularly controversial. No only will it cause problems in the quality of construction and unemployment, it may also lead to monopoly, since only big financial groups can effectively lower cost and increase their chance of winning the bids. I urge the Government to review the existing tendering system on the principles of openness, fairness and impartiality to ensure the quality of future works and fair competition. The Government should use technical score as the main basis of bid evaluation. It should look at the past and recent performance of tenderers and the professionals they will appoint to be in charge of the project before making the final decision to award the contract.

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

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, multi-layered subcontracting and the lowest-bid criterion in the tendering system have been

controversial issues in the construction industry for years. I not that they are the reasons for the repeated occurrence of substandard construction now. Under the established tendering system for public works, selection is often made on basis of the lowest-bid criterion. Due to the lowest-bid criterion, tenderers lower prices in a bid to win contracts. As the Construction Industry Employees General Union of the Hong Kong Federation of Trade Unions (FTU) has pointed out, "the fleece comes off the sheep's back". When contractors deliver according to the price, the workers will be first to suffer. Their wages will be kept at a very low level and the contractors may even owe them wages. This will affect labour relations and ultimately the quality of the whole project.

In fact, under the present economic downturn, the competition has become even more intense. In order to survive, many contractors seek to win contracts with bids below cost. This will affect the safety and quality of construction projects.

Under these circumstances, contractors will naturally cut on the cost of works, employing less capable, lower-paid workers or even illegal workers. In management, they will try to reduce staff, especially the more experienced and capable technical professionals earning higher wages. In extreme cases, shoddy work will be done. These factors will easily lead to a lower quality of work. Worse still, the Government fails to put reasonable resources into supervision and adopt an effective supervisory system to ensure quality. That is why the quality of construction has continued to decline, culminating in the short piling scandals in public housing that are now being handled by the Legislative Council.

Madam President, while these problems crop up, Hong Kong's construction industry unions have given their views to the Government and expressed the above-mentioned views repeatedly at relevant meetings of the Legislative Council.

Moreover, the present system of the Government is extremely unsatisfactory and warrants changes. The Government claims it has given greater weighting to quality in the marking scheme for all public works contracts and that it does not necessarily use the lowest-bid criterion as the only criterion. While this may fool some laymen, members of the industry know it is not true. As Mr Abraham SHEK mentioned earlier, the weighting for price in the tenders is 80%, while the weighting for quality is 20%. As a matter of fact, many bidding contractors could play a lot of tricks in the tender. In view of this, without appropriate weightings, contractors can easily practise deception.

In fact, the Government has a lot of ways to monitor the contractors who have taken up public works projects. While the Government says there is a system in place, this system has room for improvement. But objectively speaking, as I said, members of the industry are of the view that contractors can still cover up many problems with different tricks.

In view of this, we propose that if the Government continues to follow the policy of awarding contracts to the lowest bidder (although the Government does not admit this, it is objectively the case), it should consider various factors, including whether there is a great discrepancy between the lowest bid and other bids. In addition, it should consider the financial status and experience of the tenderers. It should look into their records to examine if the relevant contractors have exploited workers in the past, whether they have owed workers wages in arrears and whether they have employed illegal workers. Such information will help to determine whether the contractors will employ various means to complete the works after winning the bids. In my view, if contractors have such records, the Government should stop awarding public works contracts to those contractors. We hope that these criteria will be added to the bid evaluation, in order to reduce the incidence of jerry-building and corrupt and illegal practices.

Madam President, for the safety and conditions of construction workers on construction sites, for the benefit of the public and the safety of government buildings, we believe the Government should review and improve the tendering system for public works at once and expeditiously implement the over 100 recommendations made in "Construct for Excellence". We hope that after implementing these recommendations, the problems of short piling, short nails and exploitation of workers will gradually disappear in the construction industry.

Thank you, Madam President.

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, before I speak in support of Mr Abraham SHEK's motion, please let me declare an interest. I am the representative of the Architectural, Surveying and Planning Functional Constituency in this Council. The surveyor's firm I work for also participates in bidding for consultancy contracts in respect of the Government's public works.

On 14 February this year, I asked a question in this Council about the tenders for the Government's public works. On that occasion, Members' views also diverged on the question of awarding contracts to the lowest bidder. The Honourable Albert CHAN was of the view that if the contractor is capable of undertaking the project, there would be no problem to award the contract to the lowest bidder. However, Mr LEE Cheuk-yan used the example of the "a dollar a chicken" promotional tactic of restaurants to demonstrate that after winning bids with low prices, contractors may ultimately make profit through other means. In fact, both Members had a point.

Public works are fully funded by public money and every member of the public is paying. If the capabilities and technical merits of the tenderers are more or less the same, we have no reason to award the works contract to a higher bidder. However, the crux of the matter is whether the "low bid" is reasonable and whether the government departments awarding the contracts will strictly supervise the progress and quality of the works to ensure that they are completed according to the specifications in the tender document.

Madam President, let me briefly explain the process of the Government's award of public works contracts. Public works fall into two main categories — the architectural category and the infrastructural category, under which there are both construction and consultancy contracts. The scope of work of consultants is very wide. They may provide design services for construction projects, give technical advice, and may assess the technical proposals of contractors for works and their capability of completing the works. After the Government has awarded the contracts, they will supervise the contractors on the Government's behalf until the completion of the works.

The several cases of substandard construction or failure to complete works according to schedule or budget in public works that have been uncovered involve different kinds of works. They range from construction, flood prevention, slope maintenance to sewage disposal, and show that there is a loophole in the tendering system. Mr SHEK's motion hits the nail on the head by pinpointing the key to the problem — the lowest-bid criterion.

There is a background for the lowest-bid criterion becoming the key to the problem. In the various cases of works in which problems have been uncovered, the works department has been found, in the process of review or public hearing, to have allocated too much risk to the consultants and contractors. When the tender documents are first drawn up, officials already place all the responsibility on the consultant or contractor, with the excuse that this would enable them to

find the person in charge easily. In fact, they are trying to reduce their own responsibility. Thus, contractors subdivide the works and subcontract them to a subcontractor or even a second subcontractor, thereby causing the various problems in connection with multi-layered subcontracting.

Madam President, subcontracting is indispensable in the construction industry. It is cost-effective, just like assembly-line work in the factories. However, after the division of labour, there must be co-ordination and supervision. If government officials do not supervise and co-ordinate themselves and rely wholly on the consultants and contractors, problems will easily arise. We must understand that there can be all sorts of unforeseeable problems in the course of construction. For instance, there may be technical problems, so that the original design has to be changed. One example is piling works. If the Government changes the design, contractors are entitled to claim an increase in the construction fees. But because contractors have to undertake all the risks and there is no reasonable mechanism in the contract for a due fee increase, they are often forced to act recklessly and cut corners.

In the hearings on the short piling incidents, we have seen that the Housing Department does not have adequate experienced professionals to conduct site inspections. Even if contractors win the contracts with low bids, they still have a chance to claim additional fees from the Government. In recent years, the bidding strategy in Hong Kong's construction industry is "to win contracts with low bids and make profits through claims". This results in cost overrun, failure to complete works on schedule, contract disputes, waste of public money, increase in administrative cost and the inability to use public facilities as scheduled.

Madam President, the problems have already come to light. According to the report submitted by the Construction Industry Review Committee in January this year, the Government has pledged to review the procurement method for public works. Recently, the Works Bureau has issued letters to consult various professional bodies. Unfortunately, it does not seem to have made it a matter of urgency at all. In this year's Policy Objectives, the Secretary for Works indicated that the procedures for consultant selection will be improved by the end of next year, while a new marking scheme for consultants will be introduced in mid-2003. In the final analysis, however, if government officials can undertake more responsibility in supervision and co-ordination, consultants and contractors will no longer need to bear risks beyond their capacity. In that case, they will not risk bidding with low prices and the quality of work will also be guaranteed. With these remarks, I support Mr SHEK's motion.

**MR IP KWOK-HIM** (in Cantonese): Madam President, in March last year, the biggest scandal in Hong Kong's construction history broke out. Two Home Ownership Scheme housing blocks with short piling problems had to be demolished. This was followed by a series of construction incidents, which aroused the public's fear that the quality of their homes was not assured at all. Some blame the problems on the lowest-bid criterion of the tendering system. But in my view, the crux of the problems lies in the construction industry's failure to establish a quality construction culture. I hope that today's motion will make the industry realize that our society will not tolerate further short piling and jerrybuilding scandals.

Mr Abraham SHEK's motion today calls for a review of the Government's present tendering system to ensure contractors' quality of work. The Democratic Alliance for Betterment of Hong Kong (DAB) believes that to ensure the quality of work, it is imperative to choose a good contractor, so that the Government and the contractor can work together harmoniously throughout the project. To achieve this, the DAB is in favour of adopting an objective marking scheme to evaluate the tenders. At present, the tender for the majority of the Government's public works is carried out not on the basis of a marking scheme, but on the basis of a prequalification exercise.

I can briefly explain what the prequalification exercise is to Members. In the so-called prequalification exercise, the Government will invite qualified contractors to submit bids when it has a contract to award, and then evaluate the bids based on the lowest-bid principle. This exercise is conducted on the presumption that the contractors are capable of undertaking the projects. Thus, in the second stage, the technical competence and past performance of contractors will no longer be considered. In the DAB's view, this system apparently gives contractors no incentives to improve the quality of work.

As a member of the Building Committee of the Housing Authority (HA), I know very well that the HA uses a marking scheme to evaluate bids for its projects. The HA considers factors such as price, the company's financial status, past performance, technical competence and the workload on its hands. The HA will give the contractor two scores, a price score and a technical score, and the weighting of each depends on the complexity of the project. Thus, the past practice where the lowest bidders were awarded contracts no longer applies. This method is adopted after the spate of problems and after a review was carried out.

The DAB hopes that the Government will seriously consider borrowing the marking scheme used by the HA now for the award of future works contracts. This will induce contractors not to focus on lowering prices and ignore the quality of work.

In the DAB's view, apart from evaluating bids cautiously, a clear reward and punishment system should be established to ensure the quality of work. Reward can be an incentive for improvement. This element does not seem to exist in present government works contracts.

If there is reward, there must also be punishment. In my view, as the largest employer in terms of works, the Government must not be lenient. The Government's recent method of handling the failure to complete a Strategic Sewage Disposal Scheme project is open to question. The joint company which defaulted reached a settlement with the Government, so that the matter did not have to go to court. Surprisingly, the Government did not take any disciplinary action against the company. Instead, the company has voluntarily pledged not to participate in bidding for six months and three years. The matter was thus hastily wound up. But it has caused considerable repercussions in society.

In my view, the Government must establish a clear reward and punishment system as this is the most effective way of ensuring contractors' quality of work.

In the past, some piling contractors offered bids that did not reflect the real needs, since they were unable to foresee the geological complexity while making bids. In order to avoid losses, some contractors would take the risk to cut corners. In serious cases, they would even deliver substandard work. The HA has now introduced a piling works contract which stipulates that the contractor and the HA will bear the risk equally, that is, they will share the additional costs equally. The advantage of this is that the contractor will not be induced to take risks because of greed. The Government should give this consideration, since present government works contracts do not provide for mutual sharing of risks. If this provision can be introduced into government works contracts, contractors and the Government can establish a partnership and gradually build up a quality construction culture.

Madam President, the DAB will support Mr Abraham SHEK's motion. I so submit. Thank you, Madam President.

**MS MIRIAM LAU** (in Cantonese): Madam President, the Government's present tendering system for works contracts places undue emphasis on the lowest-bid criterion. In my view, a review is imperative.

The Government's tendering system and way of handling tenders do not apply to works contracts alone. For instance, in terms of tenders for the deeds to Home Ownership Scheme (HOS) housing units, the Government tends to select the lowest bidding law firm, thus resulting in cut-throat competition in the profession. Recently, a law firm offered to handle HOS deeds for zero fee in the hope that clients would use its mortgage services, so that it could make a small profit in the relevant mortgage services. This is a rather extreme example and the firm did not win the bid in the end. However, it shows how low the bids are in the Government's tendering exercises. Even the law firm that won the bid charges only a few hundred dollars for the drafting of a deed.

I agree that the lowest-bid criterion could help the Government (or consumers) save the relevant expenses. However, I hope that while laying emphasis on saving expenses, the Government will also attach importance to the quality of professional services. For instance, with regard to HOS deeds, although the Government emphasizes that price is not the only consideration and the winning bids are not as low as amounting to zero fee, they are much lower than reasonable market prices. We must understand that in dealing with legal documents such as deeds, lawyers have to use their professional knowledge, professional judgement and skills and handle the deeds carefully. It is not as simple as copying and typing out a deed, as a typist does. While a typed deed may look very neat, it does not necessarily mean that the title is in order. The same applies to other professionals undertaking other government projects. Thus, when the Government considers the price, it is more reasonable to accept a price closer to the market price. This will help to ensure that the service rendered for the works contract will meet a certain professional standard. If the Government accepts an exceptionally low tender price, the quality of service will undoubtedly be affected. The consequences and after-effects of poor quality of service may not be apparent overnight or in the short term. This applies to both deeds and buildings. It may be too late to remedy the damage when it is discovered. The undue emphasis on the lowest-bid selection criterion also smacks of discriminating against small and medium enterprises (SMEs), since only larger enterprises can afford to make low bids. If SMEs make similar low bids, even if they win the bids, they will either have no profit to make or have inadequate resources to handle the projects. This will also reduce the chance of

SMEs winning bids. If the winning bids are too low, the contractor may exploit the subcontractor, who will in turn exploit the second subcontractor, and so on and so forth. In the end, the work will not be done properly and more problems will be created.

I hope that as a responsible government, our government will give more consideration to the capability, professional standard and trade reputation of the tenderers apart from the tender price. It should strike a balance between price and quality and choose the optimal contractor for the public, instead of a contractor who will cut corners.

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

**MISS MARGARET NG** (in Cantonese): Madam President, the views of Members who spoke tonight are quite unanimous. Actually, Members have all pointed out that the crux of the problem with the tendering system is the lowest-bid criterion.

Under the present economic environment, the effect of the lowest-bid criterion is suppression of prices. As the Honourable Miriam LAU said just now, this problem has plagued the legal profession in terms of bidding for processing of deeds of Home Ownership Scheme (HOS) housing units. Ms LAU certainly knows more about the relevant tendering criteria than me. But because the process of tender for such work has gone seriously wrong, many legal practitioners have discussed what have to be done. That is why I also have some understanding of these issues. Regarding the tendering criteria, it seems that they are divided into two categories. Some of the criteria have to do with the capability of the law firms, whether they have adequate manpower and whether they could handle the deeds of a large number of units within a short period. But in fact, almost all tenderers meet these requirements. In the end, the only determining and decisive factor is "price", that is, whether the bid is low enough.

Very often, many law firms find that the capability criterion is impractical. The requirements with regard to capability are very rigid, such as requiring the firm to have a large staff size. But if a law firm makes use of high technology, it does not need too many staff members. Will this affect its chances of winning

the bid? If the criterion is about experience, does it mean that only large and experienced firms can undertake the job? Even if it is a smaller firm, if it puts higher priority on the job, will it not do the work more meticulously and provide better services to clients?

Thus, I find these tendering criteria extremely impractical and also unfair to some law firms. This is because in the end, everyone knows that no matter what is said, the real decisive factor is still "price". As a result, the bids get lower and lower. Ms Miriam LAU also talked about how low the bids can get and how people engage in cut-throat competition.

Actually, last year or even earlier, the Housing Authority (HA) was very concerned about this situation and even took the initiative to discuss with the Law Society of Hong Kong whether this would constitute a problem in the long term. One immediate consequence of the low bids is that many honest law firms find that they cannot allocate enough man-hours to complete the work as required after making calculations. If they have to lower their price, they would rather not participate in the bidding. As a result, those law firms which are well-established and which make honest bids are forced to quit. At present, there is little work around and the economy is flagging. If so many people are forced to quit because prices are so low, we fear that a kind of "vacuum" will emerge after some time. Since some law firms find that they cannot survive on real estate and conveyancing business, fewer and fewer firms will do such work. However, the property market will revive one day and the economic recession will be over one day. Property transaction is after all specialized work. Who will take up this specialized work later on? After we have lost the accumulated experience, are we going to depend on newcomers to accumulate experience all over again?

Some people are hoping that the imminent Land Titles Bill will change the situation. But even with the Land Titles Bill, it will take a long time to change the system completely. Society still needs lawyers who are specialized in property transaction and who have professional knowledge. If this profession declines, it may not be good for the public interest. The more successful this tendering system is, the more destructive it is, since it would create the illusion that the public interest is served because solicitors' fees used to be very high and are now very low. The question is when solicitors' fees are forced down to a certain level, people will begin to doubt the standards of this profession. Then there will be no turning back.

Last year, some lawyers and I held discussions with government officials and HA officials to identify the problem and examine whether rectification could be made. We found that there is not much that we can do. Since we have taken this path, the general public will think the Government has scored a victory. In their mind, lawyers are bad guys because they have always charged high fees. Now, the Government has succeeded in making the bad guys charge lower fees. After that, there is no turning back. The tendering system has turned a good thing into a bad thing. People think they can save some money under the present economic downturn. But in fact, this system has been in place for several years. In retrospect, has it done more good or more harm? It is hard to say indeed.

Therefore, in my view, first, a review is necessary. Second, I hope the Government will determine the weightings in the marking scheme more carefully. Some requirements, such as the requirement that the work be undertaken by a large law firm, are impractical. In fact, it does not have to be a large law firm. One can reduce the number of deeds in each tender. It does not have to be a large batch of deeds. If the tender is for a small number of deeds, the quality of service may even be better. Backed by their past performance and with their enthusiasm, small law firms may provide service of even higher quality. This is more important.

Since we are discussing the tendering system tonight, I have talked about some experience in my profession. I hope the Government will take it into consideration. Thank you, Madam President.

**MR NG LEUNG-SING** (in Cantonese): Madam President, when awarding public works contracts, the Government must abide by two main principles. First, it must ensure that the works will meet the safety and quality standards. Second, it must ensure that the works are cost-effective. In simple terms, this means that both quality and price should be assured, and neither should be sacrificed. If quality and price are not assured, we will get the so-called "soya-bean residue" works, which might jeopardize people's life and property and will result in the waste of public money. Without effective control of price, we will see even more cases of waste of public money. If there is no standard for prices, it will be hard to find objective criteria to create a level playing field for contractors interested in bidding for government works.

In bid evaluation, the Government will first lay down the safety and quality standards for a project and then choose the tender with the lowest bid which can satisfy the safety and quality standards. Theoretically, this is no doubt appropriate. But in practice, while it is easy to determine the lowest bid, it is by no means easy to determine whether the safety and quality standards can be satisfied. In fact, in the evaluation of tenders for some public works in the past, there might have been cases where the easy way out was opted by emphasizing the price, without giving enough consideration to quality and safety, thus causing many problems. As some Members mentioned earlier, there have been cases of inadequate professional supervision of works related to public housing and even individual cases of corruption. Another problem is the lack of effective control over multi-layered subcontracting of works. This often results in failure to satisfy the quality and safety standards prescribed in the works contracts. Contractors will cut corners to make the maximum profit out of the price fixed for the contract. In the final analysis, the problem does not lie with the lowest-bid criterion in the tendering process, but with the lack of effective balance and control to ensure that the safety and quality requirements are strictly met. This results in unfairness, allowing individual contractors to take a short cut, meaning that after securing a contract with a low price, it can still make profit by producing substandard work. Since honest contractors have to give consideration to both quality and price, they are often in a disadvantageous position in the competitive bidding for contracts. This goes against the principle and original intent of awarding works contracts by way of tender.

In my view, the solution to this problem is not an abolition of the important lowest-bid selection criterion. Instead, while ensuring that the contract is awarded to the lowest bidder, the criteria and terms of the tender must ensure strict control over the safety and quality of the works. In terms of the procedures of work and materials to be used, strict compliance with the requirements laid down in the tender document must be ensured. The professional supervision of sites should be strengthened and there should be clearer, more detailed and stricter requirements of quality when contracting out professional supervisory work. Multi-layered subcontracting should also be restricted. Stricter legal provisions should be made in the contract, specifying the liability of contractors in order to effectively deal with default, especially with cases where the procedures of work and materials fail to meet the quality and safety standards. By raising the risk costs through the above means, we could discourage individual unscrupulous and opportunistic contractors from

participating in the bidding, so that they can no longer win a contract with the lowest bid and then make profit by cheating and producing substandard work. In evaluating the tenders for works contracts, the quality and safety requirements must under no circumstances be relaxed. Whether the lowest-bid criterion exists or not, individual contractors may act illegally and try to maximize profits by cutting corners. Thus, strict supervision and effective preventive measures must be effected. Given that the quality and safety standards are met, all bidding contractors will be able to compete fairly from the same starting point with a reasonable price that can ensure the completion of the works. This will assure the quality of work and the effective use of public money.

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

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

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, after the short piling incidents in Home Ownership Scheme (HOS) sites, a "short nail" scandal broke out over two slopes managed by the Highways Department in June this year. In the slope stabilization works in Ping Ting Road, Wong Tai Sin and in Fei Ngo Shan, all the bars driven into the bored holes were half as short as the length specified. This shows the repeated lapse of the Government in supervising public works and the poor quality of work resulted from the lowest-bid criterion in tender.

In slope stabilization works, steel bars (commonly called soil nails) of a specified length are driven into the soil to hold the soil. If the nails are too short, they will not lose the ability to prevent landslides. In the above-mentioned case, staff of the Highways Department should have been on the site to supervise the whole project and to record the length of the nails. However, after investigations by the Independent Commission Against Corruption (ICAC), two project inspectors and a works supervisor were suspected of failure of duty. Not only did they say nothing about the length of the nails being inconsistent with the specifications, they even signed and verified the records of the works. The three of them were arrested.

This incident shows how inadequate government supervision is over works contracted out. Prior to this, there was the short piling incident involving HOS

blocks in Yuen Chau Kok, Sha Tin. Eight people were arrested, including the project supervisors of the Housing Department (HD), directors of the contractor and site supervisors.

In the short piling incident involving HOS blocks in Yuen Chau Kok, it is suspected that incorrect information was given to mislead the supervisory staff. The ICAC also found that staff of the HD had signed the form to confirm the progress of works although no inspection of the foundation works had been undertaken.

All these examples show that because of the lowest-bid criterion in the contracting out of public works, contractors would take risk to make profit by jerry-building in order to lower cost. Afterwards, they would bribe the public officers, hoping to hush up the matter. In the end, the scandals were uncovered one by one.

Some blame the problems that have arisen in connection with public works on the multi-layered subcontracting culture that has existed in the construction industry for a long time. Some even suggest implementing a registration scheme for subcontractors and reducing the number of layers of subcontracting. If the works are subcontracted to too many layers of subcontractors, it will certainly cause problems in supervision. But that is not the crux of the matter. The crux of the matter is that under the lowest-bid criterion, some people would disregard the law and conspire to cheat for their own gain.

From the above two examples, it is obvious that only the main contractor and the second and third subcontractors will engage in bribery since they stand most to gain. Thus, the most important thing is for the Government to improve the supervisory system so that people from the same department would not be able to inspect and sign records by themselves, in order to prevent corruption and abuse, rather than blaming it all on the construction industry or workers. Actually, in the series of public housing scandals, it is very often only the supervisory staff and the contractors who were arrested.

In view of this, we must greatly enhance site supervision. For instance, the Buildings Department has laid down requirements on the supervision of quality in foundation works and surveying works. When the works are in progress, independent inspecting teams should be sent regularly, instead of merely relying on written reports submitted by supervisory staff.

The Government should also adjust the tendering criteria, such as relegating the price to secondary importance and putting the track record and background of the contractors in first place. It should also consider the appropriate layers of subcontracting in the light of project scale.

Madam President, I so submit.

**MR AMBROSE LAU** (in Cantonese): Madam President, cases of delay, failure of completion, poor workmanship and jerry-building in relation to public works have repeatedly occurred because of many reasons. But the main reason is that the tendering system for government contracts places undue emphasis on the lowest-bid selection criterion. This rigid tendering system is the result of the biased thinking of the relevant government departments. In order to review and improve the present tendering system, the Government must review its rigid and outdated mentality of old. Otherwise, such a mentality will cause a tremendous waste of public money and serious damage to Hong Kong's reputation again and again.

Madam President, why is it that cases of delay, failure of completion and jerry-building seldom occur in relation to commercial projects, while cases of substandard construction frequently occur in relation to public works contracts awarded by the Government? The key to this is that the departments and persons with the power to award public works contracts have not considered at all that contractors can only make up for the lack of profit or even losses by leaving the works unfinished or by jerry-building.

While price is an objective index of competition in tender, it is not the only index. Whether it is the recruitment of staff by private firms or the award of contracts by the Government, there are important competitive indexes, such as ability and credit, other than price. Unfortunately, in awarding contracts, the Government basically only considers if the price is low enough. It has always allowed a single leaf to obstruct its vision. Sticking to its outmoded ways, it never attempts to review or strives to improve.

Madam President, the tendering system makes the contractors. There is a causal relationship between them. After winning the contracts with low bids, a lot of unscrupulous contractors end up by leaving the work unfinished or

running away for good. The Government has no means of recourse, nor can it demand compensation from the government departments which are the supervisory bodies, such as the Architectural Services Department and the Housing Department. In the end, public money is wasted. This has created an absurd situation again and again: while the Government awards contracts based on the lowest-bid criterion for the sake of saving public money, the outcome is exactly the opposite. Taxpayers have paid a high price for one after another government contract. This shows that while the lowest-bid approach seems to be protecting Hong Kong's interest and the hard-earned money of taxpayers, it is in fact jeopardizing Hong Kong's interest and squandering taxpayers' money. With this approach, one is being penny-wise and pound-foolish.

Madam President, with regard to the Film Archive which is considered a classic example of default in public works in Hong Kong, a spokesman of the Works Bureau said that the serious delay of the project was mainly due to financial difficulties faced by the contractor. The construction company originally responsible had to stop work before the project was finished. At the time, the cost already amounted to \$309 million, while the total value of the contract was only \$338 million. In such cases, the Government will normally resume the site, terminate the contract and take action to claim compensations. In addition, it will call for new tenders for the unfinished project and sign a contract with another contractor. Ultimately, the total cost of the project will be increased considerably and the completion date postponed. Moreover, even if the Government claims compensation, it is often in vain due to the liquidation of the contractor. Some unscrupulous contractors will use such methods repeatedly to cheat the Government. The strange thing is that the Government is still not alert and does not attempt to find out what is wrong. As such, it is like a blind man riding a blind horse that rushes headlong into disasters.

Madam President, the loophole and drawbacks of the lowest-bid criterion also reflect to a certain extent the rigidity of the departments and persons with the power to select tenders. They have turned public power into the fossilized "will of the officialdom". Unwilling to consult the relevant professional groups and professionals, they think that only they are experts and only they have the public interest at heart. Blinded by this sort of fatal arrogance, they twist the reasonable exercise of public power and place themselves above professional opinion. This is the root to the inflexibility of and flaws in the present tendering system.

Madam President, to ensure the quality of work of contractors, protect public interest and prevent a waste of taxpayers' money, the Hong Kong Progressive Alliance supports the call for the Government to review the lowest-bid selection criterion and the tendering system for all government contracts and the public sector. I so submit.

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

(No Member responded)

**SECRETARY FOR WORKS** (in Cantonese): Madam President, first of all, I would like to make it clear that the key objectives of the public works tendering system is to ensure that construction works or facilities procured fully meet the requirements of clients in terms of quality, functions and performance, and to ensure the completion of the relevant works in a cost-effective and efficient manner. The Government is therefore very concerned about the need to state its requirements and expectations clearly and fully before the commencement of construction works. Furthermore, we must take the most appropriate procurement arrangements to enable various parties to give full play to their strengths in the course of carrying out the construction works to add value to the construction items in compliance with our expectation.

We have always borne in mind that cost-effectiveness does not necessarily mean that the lowest bid must be accepted. Instead, quality considerations and long-term effectiveness, such as lower life-cycle costs, have to be taken into account. For these reasons, the public works tendering process, from contractors screening, risk management to tender evaluation, is taken very seriously by the Government.

The screening of contractors vary depending on procurement methods. Nevertheless, selective tendering is mostly adopted whereby contractors on the List of Approved Contractors for Public Works are invited to submit tenders. Contractors must apply to the Works Bureau before they can be included in the relevant lists of qualified contractors. Whether a contractor is qualified to be included in one or more than one categories or in a specific group will be evaluated in the light of their international and local commercial activities. Upon receiving applications from contractors, we will examine whether the

contractors are able to meet our financial requirements, and whether they possess appropriate skills and management abilities for inclusion in a certain category or group. In addition, contractors must meet the prerequisite of obtaining the International Organization for Standardization 9000 certification before they can be included into the relevant lists. Their eligibility will also depend on whether they can meet other requirements, such as the upper ceilings of the tender prices set by the relevant groups, the qualification required of full-time management staff employed by contractors, and so on.

Contractors wishing to remain in the approved contractors lists must continue to fulfill their responsibilities, including the submission to the Works Bureau unconsolidated audited accounts annually and management accounts every six months, and compliance with all statutory requirements, especially those related to industrial safety, environmental protection and clean record in respect of employment of illegal immigrants. We will evaluate the performance of each contractor doing contract work on a quarterly basis and conduct spot check to inspect the quality of contract works. What is more, actions will be taken to regulate non-compliance. We have recently introduced a more stringent measure whereby contractors will be disqualified from submitting tenders if their performance is rated as unsatisfactory for two consecutive times in their performance reports until improvement is shown. The system has so far worked well, thus indicating that contractors are very supportive of the Government's determination to improve the quality of the construction team and construction works.

The next step of the public works tendering process is risk management. All construction works are bound to face potential risks and uncertainties that might produce adverse consequences. The relevant risks might come from the contract requirements, environment, finance, economic condition, market situation, design, implementation, operation, and so on. Improper risk management might lead to adverse consequences such as delay and cost overrun, which may eventually affect the quality of the final product. Proper risk management and a fair contract arrangement can help all contractual parties to achieve the objectives of the construction works satisfactorily.

In order to minimize anticipated risks as far as possible, different types of contracts and tendering documents for public works are adopted. As most civil works carry higher risks in respect of ground condition, remeasurement contracts containing Bills of Quantities will usually be adopted. Lump sum

contracts with firm Bills of Quantities will be adopted in cases where the quantities of works can be estimated more accurately before tender. Lump sum design and build contracts will be adopted for works demanding creativity.

Selective tendering is by far the most popular method of public works tendering. Under certain circumstances, however, prequalification may be necessary. These contracts may involve works of extremely complex nature, high value or very rigid completion programmes. Moreover, they call for a high level of co-ordination and are technically demanding. Contractors applying for prequalification must possess expertise in a certain type of works. This tendering method can, to a certain extent, raise the quality of the final product.

The final evaluation procedure is attached equal importance by us. The Government has along followed the two-pronged policy objective of maintaining an open and fair competition and cost-effectiveness in inviting tenders for public works contracts and evaluating tenders. To this end, the following principles are adopted.

First, to ensure open and fair competition. The Government treats all tenders equally by ensuring that contract specifications will not impose unnecessary obstacles on them and that they are given the same information for the preparation of tenders. This is in full compliance with the requirements imposed on public procurement agencies by the World Trade Organization Agreement on Government Procurement to enable local and overseas contractors to compete in an open and fair manner.

Second, the tendering process and methods must be transparent. In addition to being transparent, they must be clear and specific so that contractors can have a deeper understanding of the items under tender. The Government will provide all necessary information in the tender documents to encourage contractors to submit appropriate and competitive tenders.

Third, successful tenders must be cost-effective. To achieve this, the Government will consider not only the competitiveness of the tender prices, but also the past performance of tenderers and whether the tenders are in compliance with the specifications and requirements set out in the tender documents in evaluating tenders.

Fourth, public accountability. As the expenses of public works are met by public money, the Government must be responsible to the public with respect to tendering. The Government is obliged to and has to be prepared to explain its tendering policies and decisions to the legislature, the authority for approving public fund allocation, members of the community and prospective tenderers.

As explained by me earlier, the existing tender evaluation mechanism serves a multitude of purposes. Apart from striving to procure quality products, we also strive to achieve value for money. Contractors invited to submit tenders must be on the List of Approved Contractors for Public Works and possess the relevant skills and meet the financial requirements. Moreover, they must never be disqualified because of unsatisfactory rating in work performance reports. Lowest-bid selection is out of the question unless all these requirements are met. This is because tender price is not the only factor of consideration in the entire evaluation process. The tender considered to be the most competitive must at the same time meet all tender requirements, such as legislative requirements and those related to the submission of tenders. Furthermore, the Works Bureau has issued specific instructions and stated clearly that tenders asking for unreasonably low prices must be vetted seriously and those without reasonable justifications must not be accepted. As for public works contracts involving prequalification, evaluation on the basis of a scoring system will generally be adopted before contractors financially and technically qualified are invited to submit tenders.

Recently, we conducted a survey with respect to works contracts awarded. A total of 101 works contracts were awarded in the 2000-01 fiscal year in accordance with the recommendation of the Central Tender Board. 28 of these contracts, or approximately 28%, were not the lowest bidders. The reasons for not awarding contracts to the lowest bidders are varied, but can generally be classified into three categories. First, quality consideration. The lowest tenders are not the most cost-effective. Second, the recent performance of the lowest bidders was not satisfactory and their working ability was doubtful. Third, it is inappropriate to award additional contracts to the lowest bidders because of their busy schedule. According to the relevant data, there is no concrete evidence showing that the lowest bid is taken as the only selection criterion under the existing tendering system. Notwithstanding this, we will still review and improve the tendering system from time to time in the light of the current situation and the market of the construction industry.

The local construction industry, including construction contractors, has actually been performing remarkably well in every aspect. Items awarded international prizes are simply too many to recount. The Passenger Terminal Building, Tsing Ma Bridge, Hong Kong Convention and Exhibition Centre, and so on, are all well received. But regrettably, there are bound to be some black sheep that bring disgrace to the entire construction industry, as is the case with other industries. In April 2000, a Construction Industry Review Committee (CIRC) was appointed by the Chief Executive to review the existing situation of the construction industry and formulate specific measures to improve the industry in terms of overall performance in building quality, efficiency, productivity, site safety, environmentally-friendliness, and client satisfaction, and so on. The relevant review has been completed and a report entitled "Construct for Excellence" has been submitted to the Chief Executive in early 2001.

The report has proposed 109 improvement measures to upgrade the quality and operational cost-effectiveness of the industry. Emphasis is laid on vigorously reforming the existing culture of the industry to develop it into a consolidated industry to enable it to make constant performance improvement and to strive for perfection in a market-driven environment. The 109 improvement initiatives have all been accepted by the Government and, at the same time, the Works Bureau has been appointed as the leading agency within the Government to strengthen co-ordination of construction works and to co-ordinate all matters related to the industry. The Provisional Construction Industry Co-ordination Board (PCICB), chaired by Mr Henry TANG, was set up by the Government in September 2001 to collect suggestions from members of the industry with respect to important matters pertaining to local construction works, and to implement improvement initiatives supported by the industry. We will fully co-operate with the PCICB in launching this mammoth programme.

To enable the construction industry to make marked improvement early, the Works Bureau will collaborate with the industry to implement the recommendations of the CIRC. The industry is now at a difficult moment as both the local and overseas economies are subject to influence by negative elements. In face of hardship, contractors tend to submit extremely competitive tenders. In the light of this, the Works Bureau will implement the following initiatives in accordance with the report submitted by the CIRC. First, the marking scheme will be used more extensively in the course of evaluating tenders for public works contracts, and a tendering mode based on the total

marks scored in terms of quality and tender prices will be adopted to provide a comprehensive score for tender evaluation. Second, more design and build contracts will be used to encourage innovation and to provide more quality products. Third, past performance will be listed as a key criterion for evaluating the quality of bidders. The proposed marking scheme will be implemented early next year, and I believe it will be well received by the industry. Actually, it is most important for contractors and members of the industry to jointly face the current situation and to strive for building a new tendering culture.

Upon the completion of the new co-ordinating framework, the Works Bureau will work in collaboration with the relevant parties to strive to achieve the objectives set out in the CIRC report so as to develop the local construction industry into an advanced, safe, creative, efficient, environmentally responsible and customer-based industry.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr Abraham SHEK, you still have six minutes 35 seconds.

**MR ABRAHAM SHEK:** Madam President, I thank Honourable Members for speaking tonight in support of my motion. I would also like to thank the Secretary for speaking on behalf of the Government in regard to the tendering recommendations for the future. I hope that he has listened to what Members said tonight, taken note of the recommendations that Members have made and would review the tendering system for the future.

Madam President, I hope that Members will give me support tonight. Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 19 December 2001.

*Adjourned accordingly at one minute to Ten o'clock.*

**Annex I****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Miss LI Fung-ying's supplementary question to Question 1**

Of the 83 street sleepers concerned, 19 are engaged in restaurant work, 16 in cleansing work, 15 work as security guards, while eight are engaged in clerical work. The remaining 25 work as couriers, factory workers, transportation workers, and so on. As regards their income levels, two earn less than \$2,000 per month, 15 between \$2,000 and \$4,000, 54 between \$4,000 and \$8,000, eight between \$8,000 and \$10,000 while four have monthly earnings in excess of \$10,000.

**WRITTEN ANSWER****Written answer by the Secretary for Security to Mrs Selina CHOW's supplementary question to Question 4**

The question concerns how much time is saved for the relevant scholars and organizations after the new procedures to facilitate mainland scholars to come to undertake short-term academic research or giving lectures in Hong Kong took effect on 1 November 2001. Since the circumstances of each application are different, we can only provide a general account of experience for reference. In the past, when mainland scholars applied for exit endorsements from the Hong Kong and Macao Affairs Office of the State Council or the Foreign Affairs Offices located in provinces/cities, the relevant applications usually reached the Immigration Department (ImmD) in two to six weeks after the sponsoring local organizations issued the invitation letters. The ImmD would take three working days to process the applications. Since implementation of the new procedures on 1 November 2001, these applications in general reach the ImmD in one to two weeks' time after issue of invitation letters, as authorized Foreign Affairs Offices can send the applications directly to the ImmD by facsimile. The ImmD can complete processing in three working days. However, in case of genuine needs, the ImmD can expedite the process and complete the vetting within 24 hours.

**Annex III****WRITTEN ANSWER****Written answer by the Secretary for Security to Mr Ambrose LAU's supplementary question to Question 4**

The question concerns the number of applications which were not approved. Members may wish to note that in the process of vetting applications from mainland scholars to undertake short-term academic research or giving lectures in Hong Kong, the Immigration Department (ImmD) will take into account whether the application is academic in nature, the applicant's academic qualifications the nature of the sponsoring organization, and so on. Having regard to the objective of encouraging academic exchange between the Mainland and Hong Kong, all applications meeting the criteria will be approved. In 2000 and 2001 (January to November), all applications processed by the ImmD met the criteria. As a result, they were all approved.

**Annex IV****WRITTEN ANSWER****Written answer by the Secretary for Security to Mr James TO's supplementary question to Question 5**

The complaints were originated from Cheung Ling Mansion, which has 176 residential units and four commercial units in total. To identify the complainants, the police, in accordance with normal procedures, deployed eight police officers who spent three hours in visiting 156 residential units and two commercial units in the building that could be contacted during the period.

**Annex V****WRITTEN ANSWER****Written answer by the Secretary for Security to Miss Cyd HO's supplementary question to Question 5**

As the circumstances of each public meeting or demonstration differ, the police or relevant departments would not handle them in exactly the same way. All actions are taken in accordance with established policy. The police's policy in dealing with all peaceful public meetings and processions is to provide reasonable assistance to participants as far as possible, and at the same time, avoid any inconvenience to other members of the public.

Regarding the Richland Gardens Incident, when some parts of the Kowloon Bay Health Centre came into operation in May 1999, the police received complaints about the protests of some residents of Richland Gardens. As the informants and witnesses were well identified and the police had interviewed them to obtain all necessary information, there was no need to enquire again with staff members, patients or residents in the vicinity. The District Office, the Lands Department and the then Urban Services Department took joint operations to remove the banners, placards and "command post" erected by the residents in question.

In the case of the complaints on the prolonged demonstration by Falun Gong practitioners outside 162 Connaught Road West, as the management office of the building was not able to provide the details of the complainants, the police had to visit the building with a view to identifying the complainants and ascertaining the veracity of the allegations. The police act in accordance with their established policy in handling all public meetings or demonstrations. The actions taken are based on the circumstances of each individual case. There is no question of adopting any "double standards".

**Annex VI****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Miss Cyd HO's supplementary question to Question 6**

The need to move a resident from one type of facility to another is determined by a change in the functional ability of the mentally handicapped person. In the 12 months ending 30 September 2001, there was no significant change in any resident's condition which necessitated such a move.

We appreciate the difficulties associated with a change in residency for people in this group. Therefore, we actively promote a "continuum of service" in residential facilities for mentally handicapped persons. Operators of these facilities fully support this approach and only consider transfer as a last resort.

Over the corresponding period in the past three years, five mentally handicapped persons aged 60 or above have been transferred from one type of residential facility to another because of changes in their condition. However, I am examining ways to see if such transfers can be further minimized by providing home visits or by the appropriate professionals to provide necessary services or by changing the staff mix in the residential facilities.

**Annex VII****WRITTEN ANSWER****Written answer by the Secretary for Health and Welfare to Mr NG Leung-sing's supplementary question to Question 6**

Over the next five years, we will increase the number of residential places for mentally handicapped persons to over 6 200. This represents an increase of over 29%.

Provision of residential places through in-situ expansion is, of course, a quicker means to achieve our goal. In recent years, we have made use of in-situ expansion to provide an additional 162 places and will provide another 20 places in the near future. Our assessment is that the scope for further in-situ expansion is limited. Our current plan is to provide an additional 1 380 residential places starting in 2002-03, primarily by constructing new facilities. We have already identified suitable sites for the provision of over 1 000 places.